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VOL. XVII.

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New Series,

VOL. VIII.

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1823.

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No. XL.

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NEW SERIES, NO. XV.

JULY 1823.

ART. I.—*Elémens de la Grammaire Chinoise; ou Principes Généraux du Kou-wen, ou style antique, et du Kouan hoa, c'est à dire, de la langue commune, généralement usitée dans l'Empire Chinois: par M. Abel Remusat, de l'Académie Royale des Inscriptions et Belles Lettres, Professeur de Langue et Litterature Chinoises et Tartares au Collége Royale de France.* Paris. Imprimerie, Royale. 1822.

THE Chinese language has hitherto been considered as extremely difficult. Mr Remusat, whose name alone is an authority of the highest kind, independently of the reasons which he gives for his opinion, considers this idea as an error. His remarks are so well fitted to encourage a more general attention to this curious language, that we shall extract them by way of introduction to a short notice of the contents of the grammar.

'As the difficulty of learning the Chinese language has been greatly exaggerated,' says the author in his preface, 'it is of some importance to show that the acquisition of it is just as easy as that of any other. This will appear to a demonstration, from a perusal of the little work now submitted to the public; and, with a view of encouraging the student, I have no hesitation in giving him beforehand my decided opinion that he will find this to be the fact. Every thing essential is contained in this short tract; and the student who

has learned the four hundred paragraphs of which it is composed may begin at once his course of reading without any apprehension of being arrested by grammatical difficulties. Had the introduction to this language been equally easy a century ago, it would probably have been much more extensively cultivated; and the literary treasures locked up in it would before now have been turned to account. It is ascertained at present that the Chinese written language, the study of which was said to occupy a whole life, may be learned as quickly as any other and without any greater effort of attention or memory. The only real difficulty lies in the difference between the grammatical forms of this language and of those to which we are accustomed; but this is so far from being insurmountable that a week's labor will remove it entirely. The number of characters appears formidable; but it is so in apppearance only, as the greater part of them are not used; and a person who is acquainted with two thousand will never be at a loss. They have certainly a strange look; but this is rather an advantage than otherwise, as it serves to fix them in the memory; and it may also be added, in opposition to the common opinion, that these characters are the more easily impressed upon the mind from their representing objects instead of sounds. The dictionaries are methodical and regular, books are generally divided and arranged in the most convenient form with notes and illustrations, tables of contents and indexes, running titles and numbered pages, and in short every possible facility for consultation and study. The grammar is of the simplest kind. Particles are used to modify the sense of the principal words instead of changes in the terminations, and the order in which the words are arranged in a sentence is invariable; so that, although the language is elliptical and figurative, it seldom happens that a phrase can be understood in two ways. I make these remarks because they express an opinion entirely different from the one generally received. It has happened, by a sort of fatality, that the most erroneous notions have been circulated upon this subject by a succession of writers; but any judicious student will be satisfied, in a very short time, that the Chinese, like the rest of the world, attach a meaning to what they write and speak; and that, with the necessary study and attention, they may of course be understood.'

One great difficulty has hitherto been the want of elementary books. The Catholic missionaries collected a mass of materials proper to be employed in the composition of such works; but of these a small proportion has yet been published, and that in a very unsatisfactory form. Mr Remusat considers the unpublished treatise of Father Prémare, entitled *Notitia linguæ Sinicæ*, as by far the best in existence. It belongs to the Royal library at Paris, and is so voluminous that it will probably not be printed very soon. The author also speaks with approbation of Morrison's grammar of the Chinese language, printed at Serampore in 1815; and of the dictionary of the same author, which, however, is incomplete. The best complete dictionary is the Chinese and Latin one of Father Basil de Glemona, published by Mr de Guignes jun.; to which should be added the supplement of Klaproth.

Mr Remusat seems to entertain high notions of the value of Chinese literature. 'The Royal library,' he observes, 'contains about five thousand volumes of Chinese books, most of which have never been opened. They are replete with the most valuable information; and comprehend all the best works in the language in the several departments of mythology and antiquities, history, geography and statistics; legislation and politics; natural history; plays, poetry, and novels. To explore this rich mine which remains almost untouched, among so many others that are nearly exhausted, would reward the labor of twenty studious persons for half a century; and only two or three years of preparation are necessary to obtain a free access to its treasures. The value of them cannot be doubted for a moment by any intelligent man; and the neglect, in which they have so long been suffered to remain, is far from being honorable to the philosophical spirit of the nation.' A printed catalogue of these books drawn up by Fourmont is already in existence. Mr Remusat informs us that he has been for some years engaged in preparing another, more correct and complete. Some of these works are remarkable for the beauty of the impression, as the *Kou-wen-youan-kian*, which the author considers as perhaps the most splendid specimen of typography in the library. Others extend to a very extraordinary number of volumes. An historical collection, of which the library possesses two detached parts, one in eighty volumes, and the other in sixty,

is said to extend in the whole to no less than six thousand. The substantial merit of some of these productions is not less distinguished, as we learn from the following character given by Mr Remusat of a sort of Encyclopedia. 'This excellent work,' he observes, 'is the finest monument of Chinese literature. It is a vast collection of memoirs on all sorts of subjects, in which the whole stock of learning possessed by the Chinese in the several departments of philosophy and history, is digested in the most admirable order. The work is a library of itself; and, if there were no other books in the language, it would be worth learning merely for the sake of reading this.' There is an air of professional enthusiasm about some of these remarks, which will not escape the notice of the judicious reader; but the high respectability and acknowledged learning of Mr Remusat afford a sufficient guarantee of the substantial correctness of his opinions.

The curiosity of the reader may perhaps be gratified by a few of the more general remarks contained in this grammar upon the structure of the Chinese language.

The simple sounds which enter into the composition of it consist, according to the Chinese enumeration, of thirty six consonants and ten vowels, including the nasals; but many of them are almost imperceptible varieties in the utterance of the same sound; and Mr Remusat reduces the number of consonant sounds, which can be expressed by European letters, to twenty six. The vowels are the five which are found in all the European languages, pronounced in the Italian long; the four French nasals, with the addition of an Italian *n* nasal, and the French *e* mute. Hence the elementary sounds may be considered as substantially the same with those which form the basis of the various alphabets of Europe. But the Chinese have no alphabet, that is, they have no characters by which to express these sounds in writing.

The language consists of about four hundred and fifty words, all monosyllables, and composed, for the most part, of an initial consonant, and a final vowel or nasal. Hence the whole language is exactly represented by the series of words that form the first lesson for reading in the common school books, ba, be, bi, bo, bu; ca, ce, ci, co, cu, &c; making allowance for the difference between the consonant and vowel sounds employed by the Chinese and English. There is,

however, a series of about a hundred words that begin as well as end with vowels; and thus form pure diphthongs. Each of these four hundred and fifty words may be pronounced with three or four different intonations; and has a different signification in consequence. In this way the real number of words may be reckoned at about twelve hundred. Some Chinese grammarians, however, by means of other imperceptible shades and varieties of intonations, extend the number to two and even to four thousand; but the former computation is the usual and correct one.

The written characters, as is well known, express objects, or, considered in reference to the language, entire words; and not simple sounds. The copiousness of these is equally remarkable with the paucity of words. The best dictionaries give the explanation of thirty or forty thousand; and some grammarians reckon the number at sixty or seventy thousand. A great part of them, however, are either obsolete or practically useless; and Mr Remusat, as quoted above, conceives that a person, who is acquainted with two thousand, would find no difficulty in reading. It is obvious, indeed, that the number of characters and of words, actually in use, must be about the same; as every idea of frequent occurrence must have an expression both in writing and speaking.

Of these characters there are six classes, a brief account of which may serve to illustrate the manner in which the language has been formed. The first class consisted originally of signs intended to imitate in a rude way the outlines of sensible objects. Thus the sun was expressed by a circle with a point in the middle; and the moon by a crescent; as in our almanacs. Of these characters there were, as Mr Remusat informs us, about two hundred; and they probably formed the original basis of the written language. The modifications which the forms of all the characters have undergone since the invention of typography, for the purpose of giving them a more uniform and elegant appearance, have in a great measure destroyed the resemblance of this class to the objects they represent; and it is only by researches into the ancient forms of the characters that the analogy can be traced. Thus the circle with a point in the middle, which represented the sun, has taken in modern writing the form of two broad perpendicular lines, crossed by three narrow horizontal ones, or a Roman H united at the top and bottom.

The second class consists of new characters formed by the union of two or more of the first class for the purpose of representing sensible objects of a different kind. Thus a new character describing *light*, is formed by the union of the two characters denoting the *sun* and *moon;* another expressing a *married woman* by the union of the three, that signify separately *woman*, *hand*, and *broom;* a signal proof of the simplicity of the early notions of this singular nation on the subject of domestic economy. *Tears* are denoted by the union of the characters for *eye* and *water;* and a *song* by those for *mouth* and *bird*. The number of characters belonging to this class is very large.

The characters of the third class are called by the Chinese *borrowed*, or *metaphorical;* and are merely those of the first or second class, diverted from their original use to express abstract notions. Thus the character for *heart* is used metaphorically for *understanding*, and that for *hand* for a *mechanic; man* repeated three times expresses the verb to *follow*. Some of these tropes appear more arbitrary. Thus, *house* is used for *man*, and *chamber* for *woman*. It is remarkable that the German word for *lady* is *Frauenzimmer*, a *woman's chamber*.

The fourth and fifth classes are both very small. The former consists of arbitrary marks expressing for the most part ideas of position or number. Thus the three first numerals are represented by a corresponding number of straight lines placed horizontally; as they were in the Latin mode of writing, by perpendicular ones. A horizontal line with a point above it, expresses *above*, and with a point below it, *below*. The fifth class is composed of a small number of the characters belonging to the other classes placed in an inverted position to express an idea opposite to the original one. Thus the forked animal man is denoted by a character formed of two lines meeting at an acute angle; while the same character placed horizontally expresses the 'counterfeit of man,' *a dead body*.

The sixth class is the most extensive, and contains of itself as large a number of characters as all the rest together. It approaches more nearly than the others to the alphabetic system of writing; and the characters belonging to it are accordingly called by the Chinese *expressions of sounds*. There is

however this essential difference; that letters are expressions of simple sounds; and as the number of them is very small it requires only a small number of letters to express all their possible combinations. On the contrary the Chinese characters of this class express directly combinations of sounds; and can only be used when the same combination indicates several different things. Thus the word or sound *lee* signifies *place*, and *carp* a kind of fish. Supposing a particular character to express the idea of *place*, and that one was wanted afterwards to express the idea of *carp*, it would appear natural to take the same character, since *carp* is expressed by the same word. On this principle however the same character can never be used to express more different ideas than are expressed by the word to which it corresponds. The principle, as far as it goes, is that of alphabetic writing; and the characters thus formed are expressions of sounds; while all the others are of the nature of picture writings, being expressions of the forms of objects. But as these alphabetic characters do not express the intonations which determine in speaking the particular sense in which a word having several meanings is to be understood, it becomes necessary, in order to supply this defect to indicate the particular sense in some other way; and this is done by uniting to the common character another character analogous to the particular sense. Thus the character corresponding with the word *lee*, when used in the sense of *carp*, is composed of the common character corresponding with this word in all its senses and of the character expressing *fish*. In like manner the word *pa* signifies *white* and a *cypress tree*, and the same character also expresses both these ideas, but, when the latter is intended, the character for *tree* is added to the common character which indicates both. In this way almost all natural objects are expressed by a compound character, of which one part denotes the genus and the other the species; as they often are in our language by compound words constructed in a similar way; such as shell-fish, cod-fish, apple-tree, pear-tree, and the like.

The great superiority of the true alphabetic mode of writing over this system in both its branches is quite obvious; and it seems extraordinary that the Chinese, having once conceived the idea of expressing sounds by arbitrary marks, should not have seen the advantage of applying this method

to simple sounds, instead of confining it wholly to combinations. This is the more remarkable as the neighboring nations, with which the Chinese have always had more or less intercourse, are all provided with alphabets. If this learned people entertained too much contempt for their Tartar conquerors to think of borrowing from them any new methods in science, they might at least have seen the uses of an alphabet among the Hindus, a nation equally civilized with themselves. Even the Japanese who employ the Chinese character on some occasions have also an alphabet. In this respect, as in most others, the Chinese exhibit such appearances as we might expect in a people which has advanced from barbarism to civilization, without being exposed in any considerable degree to the influence of foreigners. This system of writing is evidently nothing more than an improved form of the first and rudest methods, such as are still employed by the Indians of our own continent. The two hundred original characters, imitated from the figures of sensible objects, form the *roots* or *keys* of the language; and are used as such in the dictionaries; where all the new characters, formed from them by composition or the metaphorical diversion of the sense, are referred to them and classed under them. Such at least appears to have been the original principle of the mode of classification adopted in the dictionaries, although the relation between the derivatives and the radicals may not at present precisely correspond with it in any case.

These are the general features of the Chinese language as written and spoken by the three hundred millions of people, that compose this vast empire. It must be observed, however, that many provinces have their peculiar dialects or modifications of the common language. Besides these there are two forms of the language, called, by Mr Remusat, the *antique* and the *modern style*. They appear to be analogous to the ancient and modern form of most of the European languages, with the difference that the ancient form is still regarded as classical, having been consecrated by the usage of the most celebrated authors. In Europe, on the contrary, the languages have not yet varied much from the form in which they were fixed by the earliest writers of correct taste and distinguished talent. The great antiquity of the civilization of China may serve to account for this difference. Perhaps the

French and English languages will have varied considerably from their present form two or three thousand years hence and have taken new ones, which will be consecrated like the present by the best usage in conversation and writing. They will then possess, like the Chinese, two distinct forms, both regarded as pure and classical.

The Chinese language is extremely simple and even rude in its construction. Its nouns, pronouns, and adjectives have neither number, genders, nor cases; and its verbs neither voice, mode, nor tense. Every word is immutable in its form; and the ideas expressed in most other languages by inflexions are either denoted by particles or must be gathered from the position and context. Hence a Chinese grammar differs essentially from a similar work in a European language, and reduces itself in a great measure to a series of observations on the use of particular words. It does not therefore admit of abridgment or extract; and we must refer the curious reader to the work itself for further information. We add, however, a few remarks upon some particular points, which relate more immediately to manners than to grammar.

The personal pronouns are commonly omitted, expressions of humility being in general substituted for that of the first person, and of respect for that of the second. In the ancient style, the phrase *little man* is employed instead of the personal pronoun; as in the following passage of a celebrated work, where we should say, *I have the weakness to love pleasure*, the Chinese author has it, *the little man has a weakness; the little man loves pleasure.* In addressing the Emperor, it is common to use the word *subject* instead of the pronoun of the first person; and in written addresses this word is thrown into the margin, and expressed in a very small character. On the same occasion it is usual to substitute for a pronoun of the second person the phrase of *royal palace* or *bottom of the steps*, where a European would say, *your imperial majesty;* as, *the subject has received the bounty of the royal palace*, for *I have received your majesty's present.—The divine genius of the bottom of the steps has united the universe under one government;* instead of, *your majesty's superior genius* &c.*

* The phrase *bottom of the steps* appears rather humiliating than respectful. It is expressed by Mr Remusat in French and Latin by *le dessous des pieds, le dessous des degrés, infra gradus, inferior graduum.* If the translation be correct, the phrase

In speaking of the emperor in the third person, it is usual to call him the *son of heaven*. An author speaking in the first person commonly gives himself the title of the *stupid fellow;* as, *the stupid fellow is of opinion*, when we should say, *I venture to remark*, or, *in my humble opinion*. In the modern style, now used in conversation, the ordinary substitute for the pronoun of the first person is, *little younger brother*, as for, *how should I know it?—How should your little younger brother know it?* and in like manner for that of the second person, *elder brother*, even in speaking to a younger man. *What my elder brother says is very true*, for, *what you say is very true*. Sometimes the phrase substituted is in a more elevated style, as the *noble horseman*, or the *venerable senior*, in addressing a person of distinction. In the same way the possessive pronouns are expressed by circumlocutions of humility and respect; as the *little wife* for *my wife*, the *poor name* for *my name;* the *cold house* for *my house*. Thus; *the cold house is not more than seventeen or eighteen lees off;* for *my house* &c. *The noble elder brother* for *your elder brother; the noble hall* for *your mother; the noble thousand pieces of gold*, meaning *your infant daughter; the noble beauty, your daughter; the respectable garment, your cloak; the honorable chariot* for *your carriage*. The last phrase is also one of the substitutes for the simple pronoun of the second person. Thus, instead of, *do you go to town to day?* a Chinese might ask, *does the honorable chariot proceed to town to day?*

The poetry of the Chinese is constructed on the principle of rhyme like that of modern Europe. It is generally written in stanzas of four verses, three of which must rhyme together. The verses consist sometimes of five and sometimes of seven syllables, that is, words; and the arrangement of them is subject to certain rules having reference to the intonations with which they are pronounced. This system must be nearly similar to ours; as accents and intonations are in substance the same thing. In the present state of our knowledge upon the subject, we have not, however, the means of instituting an

probably contains an allusion, which we do not feel. It is not unlikely, however that it should be understood metaphorically, *bottom* being used for *cause*, and *step* or *degree* for *dignity*, as with us. It might then be translated by *fountain of honor*, a title commonly applied to the monarchs of Europe.

exact comparison between the modes of versification employed in China and our own. The poems of this nation are in general short, and written in a highly figurative and elliptical style. The following *morceau* is extracted from one of the sacred books. It appears at first reading to be of an amatory cast; but the critics of China consider it as typical of certain truths in political philosophy, having adopted, as a principle of interpretation, that every part of the sacred writings must contain some allusion to politics, which they esteem as the noblest branch of knowledge, or, in their own phrase, as the *great science*. The poem in question is as follows.

'The north wind chills the air; the snow falls in large flakes. Oh that the kind being, who loves me, would put his hand in mine, that we might walk together! How can he stay away so long? He ought already to have made haste to visit me.'

The following poem is extracted from a novel, and is perhaps interpreted in an amatory sense; although it seems to us to contain more philosophy than the other. For a work so short the subject is changed rather more frequently than the rules of European composition would admit.

'The contents of the six classical books have their origin and foundation in the heart of man. Offensive and sarcastic remarks may be expressed with so much elegance as to become agreeable. The universe is a stage, and the business of the world is nothing but a long comedy. The conduct of human affairs in all ages furnishes in truth a curious spectacle.'

With these extracts we close our remarks upon the book before us. Mr Remusat, as we stated above, expresses a high opinion of the value of the literary treasures contained in the Chinese language. It is not probable, however, that he would expect from this quarter any great accession to our stock of knowledge in any of the branches of positive science, or even any models in literature and the arts superior to those we already possess. However little we may really know of the state of learning of the Chinese, it appears certain that they have no pretensions in this respect to an equality with the European world. Mr Remusat must therefore be understood to mean that great advantages of some other kind will result to the cause of science and letters from a diligent cultivation

of Chinese literature; and in this sense the remark is undoubtedly true.

For in fact it is in this way and in this only that we can attain to a complete acquaintance with the history of this vast empire in all its branches; and when we consider that about half of the inhabitants of the globe, during the period of which we have any historical accounts, have been Chinese, this object must appear of great importance to the philosophical student. In the nations that occupy the most eastern part of the ancient continent, of which China is the principal, we have a second civilized world, much more ancient and populous, in some respects probably happier and wiser, although at the present moment less advanced in art and science, than the one with which we are acquainted; and varying from the latter in greater or less degrees in almost every important particular. The civilization of all the countries west of China, including India, Persia, Egypt, Greece, Rome, and modern Europe, may be traced without difficulty to a common origin. That of the Chinese, if, as is not impossible, it sprang at first from the same stock, was so early separated from it, that it took an entirely different direction, and has always formed an independent system. Thus the cultivated moral world divides itself into two great sections. The student of man who has directed his attention to only one of them has examined but half his subject; and has no means of comparing the two parts together, although such a comparison is probably the surest test of truth, to which we can bring the conclusions in regard to either that may be drawn from direct study. Considered in this point of view, the importance of Chinese literature, however highly it may be estimated, can hardly be overvalued.

We shall not, however, be understood to mean that every inquirer after moral and political truth is bound to become a student of the Chinese language. It is only necessary that this language should be considered as one of the branches of liberal knowledge; and should be cultivated by such persons as feel a particular vocation for it. The fruits of their researches would of course be communicated to the world in the dialects that are known to every accomplished scholar; and would thus afford to all the opportunity of making observations and drawing conclusions according to the measure of

their talents. Notwithstanding the experiments of the late Judge Winthrop of Cambridge toward simplifying the printing of the Chinese character, our country does not at present afford the materials for prosecuting this study; but there is no part of the European world, with the exception of England, and perhaps of Russia, where it would be so easy to supply this deficiency; since there are no others which carry on so extensive a commerce with China as this city and its immediate vicinity.

Art. II.—*Lectures on Physiology, Zoology, and the Natural History of Man, delivered at the Royal College of Surgeons, by William Lawrence, F. R. S. Professor of Anatomy and Surgery to the College, Assistant Surgeon to St Bartholomew's hospital, Surgeon to Bridewell and Bethlehem hospitals, and to the London Infirmary for diseases of the Eye; with twelve engravings.* London, 1822.

This work has excited more general attention, than is usually enjoyed by treatises on similar subjects; partly on account of the opposition, with which the author's attempt to publish it was encountered and which seems therefore to have been ill-judged, and partly from a certain cast of radical or levelling principles, with which it is tinctured.

The first part of it is occupied by four lectures, one of which contains a reply to the charge brought against the author by a brother lecturer, Mr Abernethy, of having 'perverted his office to the very unworthy design of propagating opinions detrimental to society, and of endeavoring to enforce them for the purpose of loosening those restraints, on which the welfare of mankind depends,' and a defence of certain opinions advanced in former lectures. The other three consist of general views of the nature, utility, and proper objects of physiology and zoology. The remaining and by much the largest portion of the work is devoted to the natural history of man. It affords a good view of what has hitherto been done in relation to this very interesting subject, together with the author's particular opinions concerning it.

We think this latter part, with some exceptions, will be found both agreeable and useful to the general reader; but as

the book is not common in this country, we can refer him to the article 'Man' in Rees' Cyclopedia, which contains nearly the same matter, and was, we believe, contributed by Mr Lawrence.

When we hinted above our disapprobation of the kind of opposition, which these lectures have met with, we were far from intending to imply that they contain nothing objectionable; on the contrary, we regret that gentlemen of the ability and industry of Mr Lawrence should adopt or attempt to promulgate some of the opinions expressed in them. We object to the nature of the opposition, because it ought to have been foreseen that it would be ineffectual and worse than ineffectual; that it would only serve to give currency to these opinions among that very class of society to which they are likely to do most injury; that the consequence of disallowing Mr Lawrence's claim to copy-right, and obliging him to relinquish the publication, would be, that twenty or more booksellers could publish instead of one, and at a smaller expense than if they had purchased the copy; and that a work which, from the nature of the title page, the expense of literary property, hot-press, and copperplate engravings, would have been found only in the libraries of the wealthy or the scientific, is now inundating London in every variety of cheap dress and embellishment, which the experienced typographers of that metropolis can devise; and that its coarse editions are circulated among all classes of the community from hundreds of obscure book-stalls, and hawked at the corners of the streets in sixpenny numbers.

Leaving, however, the further consideration of this matter to those whom it may concern, we proceed to remark upon the opinion that has excited so much attention and so much hostility against Mr Lawrence, namely, *that the notion of an immaterial soul is opposed to the evidence of anatomy and physiology.*

This conclusion, with certain corollaries which he chooses to draw from it, must be acknowledged to be somewhat uncomfortable, and would be still more so, if we did not recollect that some honest and learned men have in times past been led by mistaken reasoning to believe and teach the doctrine of materialism, without doing so much injury as might have been expected either to themselves or their neighbors; just as phi-

losophers have demonstrated again and again, that free agency is impossible, while they and all they world continue to act according to their inclinations.

We may be permitted to regret that our author had not studied more diligently the work of Dr Brown on Cause and E ect, which he quotes in terms of high approbation, since his reasoning might possibly have thus been freed from occasional confusion, and partaken less of that character, which is best described by the epithet *rambling*. As it is, we are pleased that he has alluded to it in the manner above-mentioned, as we are thus enabled to take the principles laid down in that work, which our readers may remember we had occasion to review in a former number, as mutually acknowledged.

A cause, then, being 'that which immediately precedes any change, and which, existing at any time in similar circumstances, has been always and will be always immediately followed by a similar change,' it was incumbent upon Mr Lawrence to show that similar organization in similar circumstances always produces similar phenomena, and conversely, that vast disparity of intellect is always accompanied by proportional difference in the organs, of which he assumes that the mental processes are functions. Demonstration in cases of this kind is hardly to be expected, but if in a single instance it is shown that similar, or nearly similar organization is accompanied with immense difference of intellect, it must be allowed to be probable, that the manifestations of mind are not the immediate consequents or effects of such organization, but of some intermediate link; and this probability will be stronger, in proportion as such instances are more numerous. The probability of something existing 'beyond our ken' is all that is necessary for our present purpose, and that no such probability, but the contrary, results from anatomical and physiological inquiries, is the position which our author endeavours to maintain; and in support of it the general doctrine of the correspondence of the mental phenomena with material arrangement is considered in three several points of view. The first regards the same individual of the human race at different periods of his existence. Our author expresses himself thus:

'These organs' (those within the skull) 'begin to be exercised as soon as the child is born; and a faint glimmering of mind

is dimly perceived in the course of the first months of existence; but it is as weak and infantile as the body. As the senses acquire their powers and the cerebral jelly becomes firmer, the mind gradually strengthens, slowly advances with the body, through childhood to puberty, and becomes adult when the development of the frame is complete; it is, moreover, *male or female according to the sex of the body.* In the perfect period of organization, the mind is seen in the plenitude of its powers; but this state of full vigor is short in duration, both for the intellect and the corporeal fabric. The wear and tear of the latter is evidenced in its mental movements; with the decline of organization, the mind decays; it becomes decrepit with the body; and both are at the same time extinguished by death. What do we infer from this succession of phenomena? the existence and action of a principle entirely distinct from body; or a close analogy to the history of all other functions?' p. 94.

'Where then shall we find proofs of the mind's independence on the bodily structure? of that mind, which, like the corporeal frame, is infantile in the child, manly in the adult, sick or debilitated in disease, phrensied or melancholy in the madman, enfeebled in the decline of life, doting in decrepitude, and annihilated by death. Take away from the mind of man, or from that of any other animal, the operations of the five external senses and the functions of the brain, and what will be left behind?' p. 6.

This view our readers will immediately perceive to be similar to that in which this subject was regarded by Dr Priestley and other materialists. We do not perceive that Mr Lawrence has added any thing important to the arguments produced by those writers. The extracts we have given are pretty fair specimens of his mode of reasoning, which we conceive to be not likely to carry with it such irresistible force as he seems to expect. The passage in Italics we consider a remarkable assertion, if intended, as it must be, to be received as universal. We have never met with any exact definition of a *male mind*, but are humbly of opinion that such females as Boadicea, Margaret of Anjou, and others, or within our own knowledge a revolutionary heroine, now we believe on the pension list of the United States, were actually in possession of an article of that description; and that the renowned Chevalier D'Eon, during his or her life, might have puzzled our confident physiologist quite as much as the said Chevalier's contemporaries, and bid defiance to the most approved mode of craniological examination.

Moreover, it would have been as well, if our author had informed us whether the *cerebral jelly* became softer again as the mind returned to second childhood; a point which, the fact being otherwise, he does not think it necessary to settle. To the question in the last paragraph of the extracts, we are ready to reply, whenever Mr Lawrence can satisfy us what the functions of the brain are, without begging the question in dispute, or relinquishing his favorite doctrine.

But it is plainly unnecessary to examine separately the force of the several arguments, or assertions under this head. They prove sufficiently what was never doubted, that the varieties of organization, whether original or accidental, exert a powerful influence upon the mental phenomena; but the point which they are supposed to prove, namely, that these phenomena are the result of material arrangement, is wholly incompatible with the mental identity of individuals. We hold with Dr Brown, that the belief of one's personal or mental identity is one of those impressions, which, being '*universal, immediate, and irresistible*,' are antecedent to and beyond the influence of any process of reasoning; that the fact of this identity is one of which we have as good evidence as we can have of any thing that we know; that all mankind believe this because they cannot help it; and that, since it is thus certain that the mind of any individual continues the same, whether his cerebral jelly be hard or soft, shooting out into fungi, distended and macerated by serum, excavated by abscesses or apoplectic effusions, or, by the natural processes of absorption and nutrition, disintegrated and repaired like the bark of the Argonauts till no part of the original composition remains; this cerebral jelly is not the mind, but the nidus, or, to pursue the metaphor, the bark that bears, and is directed by a nobler being.

We leave this old and beaten field of controversy, to proceed to the arguments drawn from the various minds and dissimilar structure of different individuals, or races of mankind. To enable such of our readers, as are unacquainted with anatomy, to appreciate the force of these, we premise that all such brains are, in a general view, alike in the formation of the whole or of any particular portion. Except in a comparatively small number of cases of monstrous formation, or alteration by disease, it is not pretended that any part or process is dif-

ferent in different individuals, any otherwise than in point of relative size, nor that the relative size of any particular portion can be shown to correspond with the relative power or excellence of any particular faculty. This last position, indeed, is supported by Doctors Gall and Spurzheim, but of the doubtful authority of these writers, we shall speak hereafter; it is sufficient for our present purpose that our author does not found any argument upon their supposed discoveries, but speaks of them, as resting hitherto upon their authority alone. The only difference, which he depends upon in this division of his subject, is the greater or less development of the cerebral hemispheres. Which development, as it relates only to the form of the upper part of the brain, we may illustrate by observing, that the upper outline of the profile of a skull, in which the hemispheres are most developed, will be more rounded upwards than that of any other, and that a high and upright forehead and rounded skull indicate great development, whilst a low, retreating forehead and flat skull are evidences of the contrary. Nothing more, therefore, is meant by this development, upon which so much stress is laid by our author, than that an individual of high intellectual powers has a larger head, in proportion to the face, than one of inferior capacity. That this is not universally true, any man may satisfy himself by examining the heads of his acquaintance; indeed it seems too obvious to require any other evidence than the most common observation; and the following quotations may seem to many of our readers altogether superfluous.

'The exceptions to this general rule, that men of most genius have the largest head, have been so numerous, that many have doubted its truth.'—*Richerand's Physiology.*

'Opportunities have been afforded me of examining the brain in a considerable number of persons of high standing in our country, and such as were remarkable for talents. In some instances it has appeared that a large brain had been connected with superior mental powers; in about as great number, the reverse; and one individual, most distinguished for the variety and extent of native talent, had an uncommonly small brain.—*Warren on the Sensorial and Nervous Systems.*

As to the difference in this particular between males and females, very acute anatomists have been unable to detect any. Soemmering, however, asserts, that the head in women

is larger and the brain heavier than in men, but as the individuals were of equal size, it is evident that he was comparing the brain of a tall woman with that of a short man; not to mention that the consequence of this sort of difference, according to Mr Lawrence's theory, would be rather unpalatable, and one to which we should not be desirous, for obvious reasons, to give currency.

We take occasion here to express our annoyance at the frequent recurrence of the words 'develop,' and 'development,' in this work. We believe these terms were introduced into fashion by Dr Gall and his disciples; they may occasionally be useful, but to meet them at every turn, when simpler terms are equally eligible, is really distressing. We can assure Mr Lawrence and some other modern writers, that to tell us, that the tail of an animal is long, or his teeth large, would be quite as intelligible and a great deal more agreeable, than to say that these appendages were more *developed*.

We come next to the consideration of a subject, which occupies a large portion of the lectures, and which, considered in all its bearings, is one of the most curious and interesting in the natural history of man. We mean the different families or races of mankind. Blumenbach, who is universally admitted to be the first authority on this subject, proposed to arrange the several tribes of our species under five great divisions or varieties; viz. the *Caucasian*, or white variety, supposed to have originated near Mount Caucasus, and comprehending the Georgians, Circassians, Turks, Jews, Arabians, Moors, Greeks, and the European nations generally; the *Mongolian*, or olive, comprehending most of the Asiatics; the Calmucs, Chinese, Japanese, Hindoos, Laplanders and other inhabitants of the hyperborean regions; the *African*, Ethiopian, or black, comprehending all the inhabitants of Africa, except those already mentioned as belonging to the white variety; the *American*, or red, containing the greater part of the inhabitants of our continent; and the *Malay*, island, or tawny race, who inhabit the islands of the Pacific, Southern, and Asiatic oceans. Of these, the Caucasian ranks highest, according to Mr Lawrence, in the scale of intellect; next to this on the one hand, if we understand him, comes the Malay, and on the other the American; to the former succeeds the Mongolian, and to the latter the Ethiopian; the original or white

race deviating thus into the two extremes of inferior capacity. We are not certain however that is a correct representation of his opinion, as there is much obscurity and some inconsistency in his representations of this matter. Thus, at page 476, he observes, that 'the Malay comes in between the Caucasian and Ethiopian,' but at page 431, 'that of the dark-colored races none approach more nearly than the negro to the polished nations of the globe.'

Amidst the variety of discussions, which arise from the consideration of these different races we are continually meeting with inferences in support of the favorite doctrine, and one whole chapter, 'on the differences of their moral and intellectual qualities,' is entirely devoted to it. We refrain at present from any extracts, but shall state only the general argument, which is, that the white are, and always have been superior to the dark races in mental improvement and the arts of civilization.

The full consideration of this argument would require a volume, and as our author excuses himself from entering into it more minutely, 'from want of the necessary information, as well as the limited length of his lectures,' we shall, for similar reasons, decline the task, and with the less reluctance, as it seems impossible in the present state of our knowledge, or perhaps ever, to determine the degree of influence which is exerted on the mind by the circumstances of government, soil, climate, language, food, and vegetable or animal productions. The instances of China, Peru, Mexico, Hayti, and in our own country the Cherokee nation, are sufficient to show that the dark races are susceptible of improvement, and that, in as favorable circumstances, they could not advance as far as the whites, is an assumption which is opposed to the analogy of individuals of those races. A striking instance of the great influence of government and peculiar form of society in opposition to *Caucasian* formation is afforded by the clans of the Scottish Highlands, many of whom were, within the memory of individuals now living, in a state of the most deplorable ignorance and barbarism, nearly resembling that of some of the savage tribes of our own country, and this too while they were scarcely a day's march from four universities.

It is granted that there are all varieties of form in the skulls of different individuals of the same race, and that the peculiar

characteristics of this part in all the varieties run into each other by such imperceptible gradations, that in examining a considerable number of them it would be scarcely possible to decide with certainty, to which of the five, each and every individual had belonged; and this difficulty cannot be better illustrated, than by the fact that Mr Lawrence, at page 307, ventures to dispute the opinion of such a veteran gauger of skulls, as Camper, in relation to a particular individual which the latter considered a Mongolian and the former assures us is an Ethiopian; the two extremes of variation.

Certain tribes of the dark families increase the natural and congenital flatness of the skull by artificial means; but it does not appear that any deterioration of mind is thus produced. We have the evidence of Lewis and Clarke to the contrary, in their account of the flat heads of the Columbia river; of Dr Warren in that of a boy from the Queen Charlotte islands, and of Mr Lawrence himself in his remarks upon a Carib skull from the island of St Vincents, which had undergone this process. This individual 'had been chief of the Red Caribs, was well known in Tobago, and regarded there as an intelligent, well-informed, and prudent character.' p. 324. We think his 'inch of brain,' if it was in the 'right,' was certainly not in the usual place.

Further, it is not pretended that those individuals of the black races, who have at any time distinguished themselves by evidences of great natural powers of mind, had skulls of a Caucasian formation. On the contrary, two at least of the four individuals selected as specimens of the several black races, are noticed as having given evidence of considerable intellectual vigor, one especially, J. J. E. Capitein, an African, wrote sermons, poems, and a Latin book, which went rapidly through four editions, and that, we assure Mr Lawrence, is what many a good Caucasian head would find a very difficult matter. Such instances are incompatible with the doctrine we are opposing; exceptions which, instead of strengthening, destroy the rule.

The third point of view in which the notion of mental and material correspondence may be examined, is in relation to the whole animal creation.

'The mind of the negro and Hottentot, the Calmuc and Carib, is inferior to that of the European, and their organization is also less perfect.

'The gradation of organization and of mind passes through the monkey, dog, elephant, and horse to other quadrupeds; thence to birds, reptiles, and fishes, and so on to the lowest links of the animal chain. In ascending these steps of one ladder, where shall we find the boundary of unassisted organization? where place the beginning of the immaterial adjunct? in that view that assimilates the functions of the brain to those of other organic parts, this case has no difficulty. p. 95.

'We see some (animals) sagacious and docile, capable of instruction, exhibiting mental phenomena analogous to our own; the germs or imperfect state, of what when more developed is human intellect.' p. 41.

But is this a fair statement? is there any such gradation except in a very general view? Was the difference between Newton and his dog Diamond only in degree? Compare one of the lowest in the scale of humanity, according to Mr Lawrence, a deaf and dumb Mongolian child, with the Chimpanzee or the *Man* of the Woods; will he pretend that the Abbé Sicard could teach the latter to read and write, to communicate abstract ideas by signs, give him the notion of a Deity, or the moral relations? Can one conceive of any possible process by which such *development* could be accomplished? The beaver and the bee want neither schools nor colleges to teach them to construct ramparts or geometrical cells, whose adaptation to their purposes excite our admiration; but in these things they neither deteriorate nor improve; there is no gradation, no apprenticeship; the cells of a new swarm are as perfectly hexagonal as those of the most veteran inhabitant of the hive; and all are the effect of a blind instinct, or rather of a single and overruling mind, of which these forms of matter are but the instruments—the puppets, whose movements betray the master-hand, though the connecting wires are too delicate to be detected. But the essential differences between the displays of instinct and of mind are too obvious to require further illustration. Nothing seems to us clearer than that this doctrine of gradation, however plausible in the general, can never stand the test of individual comparison. We shall only add the words of our author, in another part of his work:

'Man stands alone: his faculties, and what he has effected by them, place him at a wide interval from all animals.' p. 204. 'The points of difference between the Negro and the European do not affect those important characters, which separate man in general from the animal world; the erect attitude, the two hands, the slow development of the body, *the use of reason and consequent perfectibility*, are attributes common to both.' p. 484.

There is then a wide gap in the scale; a difference, not in degree only, but in kind, between the mental phenomena in man and the displays of instinct in animals, and that so evident, that the vulgar never confound them. None but a philosopher mistakes a man, however humble his intellect, for an improved variety of monkey, or thinks of searching for the vestiges of a tail. We are next therefore to inquire, if there is a corresponding vacancy in the chain of organization; any striking or uniform difference, or any organs, or parts of organs, enjoyed by man, which are not common to him and the four-handed or four-footed tribes; and since the brain is the organ of which the intellectual phenomena are supposed to be functions, it is here that we are to seek for this difference.

'In spite of metaphysical subtlety, of all the chimeras and fancies about immaterial agencies, etherial fluids, and the like; and all the real or pretended alarms so carefully connected with this subject, the truth, that the phenomena of mind are to be regarded physiologically, merely as the functions of the organic apparatus contained in the head, is proved by such overwhelming evidence,' &c. p. 164.

Now the result of this examination and the great similarity between the brain of man and that of the higher orders of animals, even from our author's own account of the matter, seems to us so decidedly unfavorable to his position, that we cannot help suspecting that in this point 'his wish was father to his thought.' It is found that the human brain has no part, which is not present in some animal; that it is not specifically larger, nor larger in proportion to the body, than that of all other animals; the elephant excels us in the first respect, and several birds, beasts, and even fish, in the latter. The only differences, which the comparative anatomist has hitherto been able to discover, are, that the human brain has its upper outline more rounded upwards, the convolutions of its surface somewhat deeper, and the bulk of the whole greater in proportion

to the size of the nerves that issue from it. With respect to these differences, we remark, first, that those who will compare the plates of the skull and brain of the orang-utang, in the work of Dr Tyson, the best authority on this subject, with those of the same parts of the human structure in any anatomical work, will be satisfied that they are of more magnitude and importance to the theorist, than the sincere inquirer after truth; and the following comments of Tyson himself, who had no hypothesis to support, may satisfy those of our readers, who have less curiosity, that they are neither 'prodigious,' 'wonderful,' nor even very obvious.

'From what is generally received, viz. that the brain is reputed the more immediate seat of the soul itself; one would be apt to think, that since there is so great a disparity betwixt the soul of a man, and a brute, the organ likewise, in which it is placed, should be very different too. Yet by comparing the brain of our pygmie, with that of a man; and with the greatest exactness observing each part in both; it was very surprising to me to find so great a resemblance of the one to the other, that nothing could be more. So that when I am describing the brain of our pygmie, you may justly suspect I am describing that of a man, or may think I might very well omit it wholly, by referring you to the accounts already given of the anatomy of a humane brain, for that will indifferently serve for our pygmie,' &c. Again, 'The anfractus (convolutions) of the cerebrum were alike, as also the substantia corticalis and medullaris. On the basis of the brain, we may view all the ten pairs of nerves exactly situated and placed as in a human brain; nor did I find their originations different, or any particularity that was so.' *Tyson's Anatomy of a Pygmie.*

We have chosen to take the comparison of the human brain, with that of the orang-utang, as a strong illustration of the futility of Mr Lawrence's argument. We might go on to show, that the brains of all the mammalia, of birds, and even of fishes, are marked by a resemblance to that of man, which is surprising to those, who have regarded the latter only as the remote cause of the mental phenomena; and which is any thing but hostile to the doctrine, which supposes the existence of some cause of these phenomena, other than any material arrangement. But we consider this illustration sufficient for our present purpose, leaving our readers to decide whether it is philosophical or natural to conclude that those

faculties, which place their possessor but 'a little lower than the angels,' are but the active state of organs, which he has so nearly in common with orang-utangs, pongos, monkeys, and the rest of the tribe of disgusting caricatures of the human species.

But the first of these differences, the 'development of the cerebral hemispheres,' and consequent upward rounding of the skull, is the same in kind and not very different in degree, whether we compare the Ethiopian with the Caucasian, or the orang-utang with the former. Some writers have even contended, that the difference in this respect is less in the latter case. But the abominable inference, which has sometimes been drawn from this resemblance, is resisted by our author with laudable energy.

'I do not hesitate to assert, that the notion of specific identity between the African and orang-utang, is as false, philosophically, as the moral and political consequences to which it would lead are shocking and detestable.' p. 108.

But why is this notion so absurd? because the Negro is gifted with the 'use of reason and consequent perfectibility.' The gradation of mind, then, in this part of the chain, is interrupted while that of organization is regular; on the other hand, comparative anatomy teaches us, that of all the mammalia, the ape and monkey tribes alone possess in common with man the posterior lobes of the cerebrum. Here the gradation of organization is in its turn interrupted, without being accompanied by any corresponding interval in that of mind. For if we allow the properties of mind to exist in any degree, in any species but our own, it will hardly be pretended that the beaver, the dog, or the half reasoning elephant, are very remarkably inferior in the display of them, to the abovementioned antic generations.

With respect to the second point of difference, we observe, that the convolutions of the brain are to be found in the hog, whilst they are entirely wanting in an animal, whose shrewdness is almost proverbial, we mean the common rat.

The third circumstance, the larger size of the human brain in proportion to the nerves that issue from it, we consider first as a sort of forlorn hope It was long asserted that the human brain was absolutely the largest; then that it was so in propor-

tion to the body; then that it was so, when compared with the cerebellum or medulla oblongata; but to all these were produced exceptions. The comparison with its nerves was at last resorted to as the only tenable point. But this statement of the difference is a sort of inversion of the truth, which is, that the nerves of animals are, in general, larger than human nerves in proportion to their brains, and this might have been expected *a priori* in conformity with the general rule, that every organ is more extensive, as the function which it serves is more perfectly executed. Thus the muscles of animals, being proportionally more active than those of man, the nerves going to the muscles should be larger, and this is well illustrated in the large nerves of motion in the carnivorous animals. The senses also in animals are generally more perfect than in man, and the nerves larger. When this is not the case, they are proportionally small, as in the whale tribe, where the blowing holes occupy the place of the nose, the olfactory nerves are so small that their existence has been denied by great authorities in comparative anatomy; and the optic nerves of the mole are about the size of hairs and cannot be traced to the eyes. The nerves being the conductors of external impression to the brain, and of the effects of volition on the brain to the skin, muscles, &c. we should expect them to be large where sensibility is great and motion quick, and this appears a sufficient explanation of the fact which Mr Lawrence produces in support of his theory, viz. that the nerves are, in the fœtus and child, proportionally larger than in the adult. It may be asserted, though it can hardly be proved, that the fœtus has not great sensibility, because it would be unnecessary. But allowing this to be the truth, it may be replied that, as it would be manifestly contrary to all analogy to suppose, that these nerves are in a few hours, or even minutes, increased, or as our author would say, developed, to the size in which they appear in the child, we must conclude that they are prepared beforehand for the offices, which they are so soon to be called on to perform. Finally, the importance of this proportion between the brain and nerves, depends 'upon an assumption that a certain bulk of nerve requires always the same proportion of brain for the execution of its office—a datum by no means self-evident.' p. 169.

We pass over those pretended cerebral differences, which our

author either alludes to, without specifying, or acknowledges to be untenable, to notice the argument drawn from the difficulty of explaining the manner and time of the connexion of an immaterial soul with the body. As this argument is an old one, and derives no additional force from anatomy or physiology, it is unnecessary to notice it farther than to observe that the difficulty is none of our making; that, finding no material arrangement which, according to the premised definition, can be considered the immediate cause of the mental phenomena, we conclude that this cause is not material. This conclusion cannot be affected by our inability to explain the manner in which a cause, of which we profess to know nothing but the effects, should produce those effects. To such sneers as the question 'whether the brain of the homunculus of eight days old is too small a tenement for the etherial lodger,' the reply is, we are ignorant, and what is more disagreeable, are pretty certain to continue so.

That the soul is only known to us by bodily manifestations is an argument of as little force; it seems impossible, from the nature of the case, that it should be otherwise with the souls of others, to which alone the objection applies.

On the whole, we are of opinion that Mr Lawrence has adopted an hypothesis from certain general views, which is by no means confirmed by a closer investigation, and that the existence of a cause of the phenomena of mind, distinct from mere matter, so far from deriving its only support from revelation and the general belief of mankind, as our author insinuates, and being opposed to, or differing from the opinion we should derive from the study of anatomy and physiology, will be continually strengthened by our increasing acquaintance with those sciences.

Another subject which we think proper to notice, is the notion of Life. The word itself is a collective term, embracing in its signification the ideas of all those circumstances which are peculiar to one of the two great divisions of sensible objects. There is none exactly opposed to it, unless we may be allowed the use of such an one as *inanimation;* death not being sufficiently comprehensive, since it is commonly applied to beings, which have at some time displayed the phenomena of life.

It is evident, therefore, that the term will mean more or

less, according to circumstances. Thus, in common conversation, we include in it only a few obvious qualities of the being spoken of, as motion, warmth, respiration &c. if an animal, or verdure, succulence, &c. if a tree or shrub. In a physiological view, it includes many more particulars, such as growth by nutrition, coexistence of solids and fluids, opposition to chemical affinities, &c. or the possession and integrity of organs adapted to those purposes, in other words, organization. When we say that any being has life, it is plain that we mean no more than that it is organized. Organization, therefore, is the invariable antecedent of the living phenomena, and whether such organization be more or less perfect or extensive in one being than in another is of no consequence; the fact, that it is organized, is sufficient to place it in the class of animated beings.

To interpose any thing between these circumstances, organization and living phenomena, is unphilosophical, because it is unnecessary. The *archeus*, the *materia vitæ diffusa*, the *spirit of animation*, all these may be realities; we cannot prove the contrary; but we do not know that they are so and see no reason for supposing it gratuitously, when their existence, if granted, evidently adds nothing to the sum of our knowledge, beyond the single fact. It explains nothing and removes no difficulty. We therefore cordially agree with Mr Lawrence, that such fancies are useless, and worse than useless; that each in its turn has been the *ignis fatuus*, that has plunged its deluded followers in the mire; 'the fatal Cleopatra for which many a powerful mind has lost the world and been content to lose it;' that they have obscured the records of science with vain imaginations, and rendered the study of many a voluminous author equally profitable with the labor of him, who seeks for two grains of wheat in two bushels of chaff; and we trust that the period is not far distant, when these opprobria of science, and particularly of medicine, shall rest forever with the substantial forms, the entities and quiddities of our fathers.

A consequence of our author's notions respecting the mind, is an occasional confusion of the ideas of this and of life. This is in one instance shown by an improper attempt at ridicule. Speaking of the hydra, or fresh-water polypus, each part of which, when cut in two, becomes a perfect animal, he asks, 'if the soul can thus be divided with a knife?'

In the commencement of the inquiry, whether all the varieties of the human family are probably descended from the same or different original stocks, are the following passages.

'This disquisition will perhaps be deemed superfluous by those who regard the Hebrew Scriptures as writings composed by the divine inspiration &c.'——'But the entire or even partial inspiration of the various writings comprehended in the Old Testament is doubted by many persons &c.' p. 215.

with several others of a similar nature, and a sufficiency of biblical criticism in the notes to this chapter. Now the result of this inquiry being entirely consonant to the account given in the scriptures, namely, that the whole human race did derive their origin from a single pair; this discussion of the inspiration of the sacred writings was unnecessary, and so far reprehensible, as it was likely to give offence to many readers. We were reminded by it of an opinion expressed towards the beginning of the work, namely; that

'Divinity and morals however excellent in their time and place, do not exactly suit the theatre, audience, or subjects of these lectures.' p. 8.

As some of our readers may be curious to know something of the nature of the arguments, produced from natural history in support of the belief that all men have descended from the same stock, a position which, at first view, seems improbable, and the more so, to those who believe, with our author, that differences produced by climate and other external circumstances are confined to the individual, we shall endeavour to give a concise account of it.

Any number of animals, that are characterized by the same fixed and definite external forms and constant and permanent difference from all others, are considered as belonging to the same species; but this notion of species admits of some variations in individuals. These in wild animals are commonly slight, being confined to differences of texture and color of the fur, length of the mane, tusks, &c. In domesticated animals they are much more numerous and important, and by the contrivance of man are perpetuated, varied, and aggravated, till the original stock becomes doubtful, as is remarkably the case with the dog.

What amount and kind of difference may be fairly considered the effect of accidental deviation without implying specific difference, has been frequently a question, and several tests of identity of species have been proposed, but have been found insufficient, and that particularly when applied to domesticated animals, where their assistance is most needed. Analogy and probability, therefore, can only be depended upon in determining questions of this kind, and the rule proposed by Blumenbach seems to be the best, namely; that when we find the difference between individuals, that agree in general, to be not greater than we know to be sometimes produced by accidental circumstances, it should be considered as denoting only a variety of the same species. Man is eminently a domesticated animal and exposed in the greatest degree to the various effects of such a mode of existence, and among others to variations in the appearance and structure of individuals. When, therefore, we find, as may be sufficiently proved, that 'there is no point of difference between the several races of mankind, which has not been found to arise, in at least an equal degree, among other animals as a mere variety, from the usual causes of degeneration,' (p. 232,) it is conformable to the rule to presume that these races are but varieties of one species, the original characters of which are generally supposed to be present in the most perfect individuals of the Caucasian formation. This presumption will be strengthened by the accounts of Albinos, porcupine men, and families with six fingers on one hand; since there cannot be the smallest doubt, that if it were possible and allowable to practise with such persons the same expedients, as are employed with the common domestic animals, varieties might be produced, which, in point of difference from the Caucasian formation, should vastly exceed those of which we have any knowledge. Mankind then, being all of one species, may have descended from a single pair; and since nature does nothing in vain, it is the part of philosophy to believe that they did so.

Though the general tone and manner of the Reply to the charges of Mr Abernethy are not pleasing, it is some excuse for Mr Lawrence, that he was provoked by the harshness of the attack, and tempted by the feebleness of the reasoning in many parts of it. Weak and unphilosophical, however, as many of Mr Abernethy's arguments were, we think the charge 'of

having propagated opinions detrimental to society,' is not sufficiently disproved, or rather that good ground for it may be found in these lectures. The doctrine of materialism we believe to be such an opinion, since it leads to conclusions which are incompatible with peace and good order, to say nothing worse of them. It is true that our author asserts only that this doctrine is true, *physiologically*, or that it is the result which we arrive at from the study of physiology and anatomy only; but this, if it were the fact, would be a powerful argument for the truth of materialism, considered in any other light, as well as in a physiological one; and he should not have adopted a position likely to be so extensive in its bearings, without deeper investigation of its probability and possible influence. We agree, however, with Mr Lawrence, though for different reasons, that a greater outcry has been raised against him, than was at all necessary. We can assure those who tremble at the prospect of 'the final accomplishment of his grand purpose, the complete emancipation of the mind, the destruction of all creeds and articles of faith, and the establishment of full opinion and belief,' that there is not the smallest danger that it will ever be accomplished. It implies a revolution, not in external circumstances only, but in the very nature of man, which will be effected when all mankind are wise and good,—and not till then.

We are sorry to observe, at p. 78–9, a sneer at an opinion of Mr John Hunter. For obvious reasons we do not extract it; but our physiological readers, who may choose to consult the work will perceive that it is founded on a misrepresentation of Mr Hunter's reasoning, and that the evidence of comparative anatomy respecting the gall-bladder, as referred to in the latter part of the paragraph, strengthens instead of weakening that reasoning, since the hepatic ducts, though they may, and frequently do, enter the intestine separately from the cystic, yet in such cases always communicate by branches with the gall-bladder itself, a parallel to which will not be pretended to exist in the other case.

We hinted above our opinion of the doubtful authority of Gall and Spurzheim; in proof of this, we shall borrow the notice of two mistakes respecting important organs, from Dr Warren's late work on the Sensorial and Nervous Systems. These authors say, that the organ of courage resides in the

space behind and between the ears, and that 'courageous animals have the head between and behind the ears large.' This is probably founded on a hasty examination of powerful animals, such as the lion, whose head in this part is really broad, on account of the large muscles which cover it. When these are stript off, the skull is seen to be narrower than that of various monkeys. And the organ of amativeness is in no way remarkable in the baboon, the most extraordinary of all animals for this propensity. Lastly, when Dr Spurzheim, at his lectures in Edinburgh, was several times publicly defied, by the late learned Dr Gordon, to demonstrate some pretended discoveries respecting the course and origin of the nerves, he was unable to return any satisfactory reply.

Our limits will only permit us to remark upon two more passages in this work. We have known many good and pious people, who are sceptical in regard to the expediency of sending missionaries to the Hindoos; but the objection brought against this practice by our author, will probably be as surprising to them, as we acknowledge it was to us.

'The retreating forehead and the depressed vertex of the dark varieties of man make me strongly doubt, whether they are susceptible of these high destinies; whether they are capable of fathoming the depths of science; of understanding and appreciating the mysteries of our religion.' p. 433.

The following is among other reasons in support of the opinion that the ancient Egyptians belonged to the Caucasian variety.

'Can we deem it possible that Homer, Lycurgus, Solon, Pythagoras, and Plato, should have resorted to Egypt to study the sciences, religion, and laws, discovered and framed by men with black skin, woolly hair, and slanting forehead?' p. 294.

In concluding our remarks upon these lectures, we cannot help observing, that, besides those advantages of a divine revelation which are common to all christians, two classes of philosophers, we speak with reverence, have some peculiar ones; since the materialists find in the sacred scriptures the only evidence of the existence of their souls, and the Malebranchists of their bodies.

Art. III.—*M. Tullii Ciceronis de Re Publica quæ supersunt, edente Angelo Maio, Vaticanæ Bibliothecæ præfecto. Impressum Romæ; denuo impressum Londini.* 1 tom. 8vo. Impensis J. Mawman. 1823.

La République de Cicéron, d'après le texte inédit, récemment découvert et commenté par Mons. Mai, Bibliothécaire du Vatican: avec une traduction Française, un discours préliminaire, et des dissertations historiques par M. Villemain, de l'Académie Française. 2 vol. 8vo. Paris. Michaud. 1823.

We could hardly have anticipated, at the commencement of our critical labors, that we should have in the course of them the satisfaction of announcing to our readers a work, before unpublished, by the great Roman Orator. Without shrinking at any time from a fearless and impartial performance of our functions, we cannot but experience, in attempting to discharge them on this occasion, something like the diffidence that would naturally be felt by a magistrate of ordinary powers, when required to sit in judgment upon the most distinguished individual in the country. We shall strive as usual to render substantial justice without fear, affection, or hope of reward; but, in consideration of the eminent dignity of the author we are now called to notice, we shall venture to relax a little from the tone of rigid but wholesome severity which we commonly find it necessary to assume; and shall make no scruple to welcome the 'man of Arpinum,'* at his reappearance before the literary tribunal after a silence of three or four hundred years, with something of the favorable prejudice and eager enthusiasm, which, as regular reviewers, we reserve in general for the popular novelist and poet of the day.

The renowned discovery of the long lost and much lamented treatise of Cicero on Government has excited, for a year or two past, a strong sensation in the literary world; and the publication of it was expected with no small degree of impatience. The work had been placed by the unanimous consent of all antiquity at the head of the productions of its illustrious author, as well on account of the importance of the

* Arpinas ignobilis.—*Juvenal.*

subject, as of the ability and eloquence with which it was treated. It is known that Cicero himself considered it as the best of all his writings; and he frequently alluded to it in his letters and other works with marked complacency. The singularity of the mode in which this interesting relic of former ages was discovered and brought to light, after lying *perdu* several centuries under St Austin's Commentary on the Psalms, added something to the curiosity which was felt respecting it. Finally, the political events of the last and present ages, and the popularity which has been given by them to all inquiries into the principles of government, rendered the present epoch particularly favorable for the first appearance of a celebrated work upon this subject by an ancient author. It is true that we were not wholly ignorant before of the general ideas entertained by the Greeks and Romans on the leading points of political science. Several of their best historical and political works have always been in the hands of the public. Nevertheless, it was impossible not to look with a high degree of curiosity for a treatise by one of the greatest philosophers and statesmen of all antiquity upon those momentous questions, which, for the last half-century, have engaged so deeply the attention of reflecting minds, and have, in their practical discussion, convulsed the civilized world to its centre. Some persons, perhaps, may have fancied, or hoped, that the authority of this great teacher, coming, as it were, like a ghost from the grave, would serve to settle all disputed points, and appease the popular commotions of the present day, as we are told in a passage of Virgil, generally supposed to allude to his famous contemporary, that the orator was accustomed, in his life time, to quiet, by his venerable presence and charming eloquence, the tumults of the Roman forum. On this head, however, we have not, for ourselves, been very sanguine. We have scripture authority for the belief, that, if men will not hear reason from their friends and contemporaries, they would not be convinced, although one should rise from the dead.

The high expectations entertained of the work upon all these grounds have been, as is usual in similar cases, partly disappointed, and partly gratified. The treatise is in fact much less complete than we had been led to suppose, from the manner in which it was announced. In the notices of it,

that appeared from time to time in the newspapers, it was spoken of as in substance the entire treatise, although disfigured by some breaks and blemishes. It appears, however, at present, that the discovered fragment is only about a fourth part of the whole essay; and, including all the passages preserved in other authors in the form of citations, which have been diligently collected and arranged by the present editor, we have in the whole but about a third. It is known that the treatise consisted of six books. Of these the first and second only are in any degree complete, and even in them there are large defects. Of the third, fourth, and fifth, there are only a few scanty fragments; and of the sixth, nothing. A long and very remarkable passage of the sixth book, commonly entitled *the Dream of Scipio*, is, however, extant in Macrobius; and forms of itself one of the most curious and interesting relics of ancient literature. It is intended, as is well known to the classical reader, to establish, under the form of a poetical fiction, the sublime dogma of the immortality of the soul. It was probably introduced at the conclusion of the work for the purpose of adding the hopes and fears of future retribution to the other motives to virtue. But, although the preservation of this and some other extracts makes up in a degree the deficiencies of the newly discovered fragment, the public have been somewhat disappointed to find that they still possess in the whole only a third part of the promised and expected treasure. On the other hand, the fragments, that are really presented to us, are fitted by their merit to satisfy and even surpass the highest expectations that could possibly have been formed of them. They display, throughout, the rich and glowing magnificence of style always under the control of a perfect taste, that forms the manner of their author in the best of his other writings; and they contain some passages equal to any thing he ever wrote. These beautiful fragments, while they justify the high commendations bestowed by the ancients upon the entire treatise, and thus increase our regret for its loss, afford nevertheless a rich feast to the lover of eloquence. It may be added, that, as the works of Cicero are more valuable for the generous feelings and high poetical enthusiasm which constantly inspire them, than for the originality or scientific precision of the matter, they are less injured than many others would be by being read in a muti-

lated form. The exposition of a new scientific theory is generally unintelligible unless complete, and a fragment of a work devoted to this object would be in a manner worthless. But the writings of Cicero are not of this description. It was his habit to draw his theories in general either from the common fund of familiar truths or from the works of the most distinguished preceding philosophers. Thus the current of his thoughts on a particular subject may be divined by reference to the principles of human nature, or to the state of opinion or learning at the time when he wrote. Every separate fragment is a chapter in the great book of universal experience commented upon by this illustrious observer. The value of the commentary lies in the power and charm of the style. It is like a fine poem of which we know the fable; and we read any detached passage with nearly the same interest and pleasure whether we possess the whole or not.

The new-found fragment of the Republic was first printed at Rome under the care of the discoverer, Mr Mai, the keeper of the Vatican library; and the text was accompanied by a dedication to His Holiness the Pope, a long preface, and a few grammatical notes by the editor. The work has been reprinted at London from this edition without alteration. As fast as the sheets were struck off at Rome they were sent to Paris; where the text has since been published with a French translation on the opposite pages, a new preliminary discourse, additional notes, and several long dissertations. The preface and notes of the Roman editor are also preserved in this edition. The new matter is by M. Villemain, one of the most distinguished scholars and academical orators in France. In the following notice of this interesting publication, we shall offer, in the first place, a concise statement, extracted from the preface of M. Mai, of the principal facts that are known respecting the composition and loss of the treatise and its late discovery. We shall then add a few remarks upon the literary and scientific merit of the work; and conclude with a notice of the additional matter supplied by the French editor.

1. The treatise on Government was begun by Cicero during a short summer retreat from the business of the forum, which he passed at his residence near Cumæ, in the seven hundredth year of the city, the fifty-fourth of his age, and the tenth after his consulship. This is known by a passage in a

letter to his brother Quintus. 'I amuse myself pretty well,' he observes, 'in the country, excepting that I feel very sensibly the want of your society; and I shall stay till June. I have been occupied in writing the treatise on Government of which I spoke to you. It is a work of some extent and labor; but, if I succeed in it to my mind, I shall think the time employed upon it very well spent. If not, I shall throw it into the sea that is now rolling before my eyes as I write.' It is not certain at what time the work was completed. Mr Mai seems to think that it was struck off at a single heat; but this supposition is expressly contradicted by a remark of the author in another letter to his brother. 'As to the work that I began at Cumæ, and which you inquire about, I am still employed upon it, but have changed the whole plan several times.' This passage makes it certain that he had left Cumæ before the work was completed. In fact, the treatise is too considerable to have been meditated and written during a single visit to the country, which, as Cicero was then in full practice at the bar, could not well have lasted more than a few weeks. In a letter written the same year he tells his correspondent that he does not pass a day without arguing some cause. The circumstance that the plan was several times changed, proves of itself that the work was a good while in preparation. The author complains, in other letters, of want of leisure to finish it. 'I heartily wish,' he writes to Atticus, 'that I may be able to complete the work that I have undertaken. The subject, as you well know, is a very important one. To do it full justice would require much leisure, a thing of which I am greatly in want.' It is known, however, in general, that Cicero wrote with great facility and despatch. The work upon its appearance was received by the public with general approbation. 'Your books on Government,' says a correspondent, writing to him, 'are universally approved.' *Tui politici libri omnibus vigent.* His friend Atticus, we are told by the gratified author, devoured them; as he had previously extolled to the skies the essay on oratory. The writer himself shared the common enthusiasm; and often alludes to this treatise with evident complacency. It has been remarked, however, with justice, that the encomiums bestowed by Cicero himself upon his own writings and speeches are much less open and direct than those which he continually

lavishes upon his actions and character. The difference perhaps arose from an instinctive feeling that philosophy and eloquence were his strong points, and conduct his weak one. He seems to be conscious, that he stands unrivalled in Rome as a writer, and an orator; and, without laboring these points, he makes it his constant effort to persuade himself and others that he is also the greatest statesman and magistrate that his country has ever produced. Among other examples of this kind may be mentioned a passage in a letter to Atticus, in which he describes himself, without much ceremony, as realizing, with some slight exceptions, the character of the perfect citizen, exhibited in one of the books of this treatise. The letter was written from his government of Cilicia, at a time when he was negotiating at Rome to obtain the honor of a triumph upon his return. He affects to treat the desire to obtain this distinction as a slight weakness, but as the only one in his character. 'Were it not,' he observes, 'for this idea of the triumph, that has been suggested to me, and which, however, you approve, I do not know that you would need to look much farther for the perfect citizen described in the sixth book.'

The treatise on Government continued to enjoy the highest reputation as long as learning was cultivated in Rome or its provinces. It was particularly admired and frequently quoted by the most eminent of the christian fathers, especially Lactantius and Austin. The sublime passage upon the characteristics of natural law, preserved in the writings of the former, is familiar to all; and the latter is supposed to have taken from this treatise the hint of the most celebrated of his own works, entitled *the City of God.* It is justly remarked by the French editor that the soul of learning had transmigrated at this time into the body of the new religion. The christian fathers, without being precisely philosophers, were the boldest thinkers, and best writers of the time. We find them fearlessly criticising the substance of this and the other valuable treatises of the classical authors; approving what they considered good, and condemning the rest without scruple, while the pagan writers of the same period only dwelt with a barren and indiscriminating admiration upon the structure of the language. The church had not yet sunk into the gross ignorance, that disgraced it at a later period. Austin would not have converted a

splendid copy of the Republic into blank parchment with a view of making it a receptacle for his own Commentary on the Psalms; but the worthy father would doubtless have been greatly delighted, if he could have anticipated that his Commentary would serve as a sort of shield to protect this solitary copy of the work he valued so much from the rage of the barbarians, and preserve it, at least in part, for better times.

In the general wreck of learning, which attended the fall of the Roman empire, the treatise on Government disappeared; and thus shared the fate of the institutions it was principally destined to celebrate. One or two scattered copies survived a while; and a few scanty notices of it are to be found in some subsequent authors. One of the last persons, who make any precise mention of it, is the celebrated Herbert, afterwards Pope Sylvester II, the most distinguished scholar of the tenth century. It is not quite certain that even he had read it; as the passage in question is an order to a monk, to whom he is writing, to procure this treatise at Rome and bring it to him. The presumption seems to be, however, that the work was then considered as extant. John of Salisbury, who flourished in the twelfth century, quotes it; but as the same passage is also quoted by Austin, there is no certainty that John did not receive it at second hand. This vestige, uncertain as it is, is the last that remains of the existence of the Republic. Two centuries later, when the love of learning had already begun to revive in Italy, unwearied researches were made by Petrarch after the work, but to no purpose; and he finally gave up the point in despair. The smallness of the number of copies of the classical writings, that had survived the desolating period of the dark ages, is remarkably illustrated by the fact, that two valuable works, to wit, the treatise of Cicero on Glory, and that of Varro on Divine and Human Affairs, which Petrarch himself had at one time in his possession, have nevertheless perished. The copies he read were perhaps the only ones that remained; and these, it seems, were destroyed by some accident. The learned librarian of the Vatican remarks upon this occasion, with an enthusiasm better suited to his literary than to his ecclesiastical calling, that 'the man who should now recover these works, which were read by Petrarch only five hundred years ago, might well sacrifice a hecatomb to fortune.' The researches made by

Poggio in the time of Leo X, as well as well those of later date, were equally fruitless. Vague rumors of the existence of the work were occasionally circulated, as in a letter to Roger Ascham, the tutor of queen Elizabeth, from a correspondent at Strasburgh, who tells him that he had been promised a copy of the Republic by a person dwelling in that neighborhood; but that he had sent for it repeatedly without being able to get it. The following passage in an epistle of Caspar Barth, a German scholar of the seventeenth century, leaves room to suppose that the work was extant in that country till a very recent period. 'I now remember,' he observes, 'to have heard a fact related by John Henry Meiboom, a very credible and worthy man, which would prove, if true, that the treatise on the Republic existed very recently in Germany. He told me that there was formerly in the monastery of Rittershaus, near Brunswick, a considerable library; and that the titles of the books still remain pasted over the pigeon-holes where they were deposited. One of these titles is that of Cicero's treatise on the Republic. The library was destroyed during the thirty years' war, and some miserable soldier has deprived the world of a literary treasure that the lapse of ages will probably never restore.'

Upon the whole, the learned had lost all hope of ever recovering this treatise, when the sagacity of the present race of scholars opened the new mine of the *codices rescripti* or twice-written manuscripts. Parchment was formerly the principal material employed in writing; and, as it was naturally much more scarce and dear than paper is at present, it was not unusual, even in the time of Cicero, to save the expense of a new sheet by employing a second time one that had been written upon before, after first effacing the former inscription. In general the writings thus effaced were probably of little value; and it is not likely that any serious loss was sustained by this method until the decline of learning. But it is fearful to think what ravages it must have made among the few remaining copies of the ancient classics, at a time, when, in the opinion of all competent judges of literary merit, a single homily of any barbarous saint or bishop was well worth the profane rubbish of a dozen whole Menanders. Fortunately, the writing thus effaced, may in many instances be read by a very careful inspection and the use of chemical agents to re-

vive the faded color of the ink; and there is certainly room to entertain sanguine hopes of recovering in this way some of the valuable works that were thought to be lost forever. We have already had occasion to lay before the public some account of the discoveries made upon this principle by M. Mai in the Ambrosian library at Milan. The reputation, which he obtained in consequence, procured him the more distinguished station which he now occupies; and the recovery of a part of the Republic was one of the first fruits of his researches in the Vatican. It can hardly be thought unreasonable to anticipate much future success from so auspicious a commencement. The manuscript containing this fragment must have been a very splendid one, and is considered by M. Mai as of the highest antiquity, perhaps of the second or third century. We need not follow the learned editor in his very minute description of it, having already stated in general what part of the work has been recovered. It may be remarked that, if the copy had been somewhat less elegant, and the characters of a common size, the manuscript would easily have contained the whole treatise, within the same compass which is now occupied by less than a third part of it. We omit, for want of room, a great variety of curious details, contained in the editor's preface, in regard to his immediate subject, as well as some others that are touched upon incidentally; and proceed, without farther delay, to offer a few hasty observations upon the literary and scientific merit of this celebrated treatise, as far as we can judge of it from the recovered fragment.

2. The treatise on government was written in the dialogue form; and it is stated by M. Mai that it was commonly cited by the christian fathers under the name of *the Dialogues*, although the same manner is adopted in most of the other philosophical works; a remarkable proof of the high estimation in which it was held. The principal interlocutors are Scipio Africanus and Laelius. Several other persons are also present and occasionally speak. The author intended at one time to appear himself as the principal speaker, and had been advised to do it by his friends; but finally determined to lay his scene at a period somewhat distant from the time when he wrote, and thus escape the necessity of alluding to the unhappy dissensions that had recently distracted his country. In choosing his principal speakers Cicero was extremely judicious and

happy. It was necessary that the persons selected should have been distinguished both as statesmen and as scholars; in order that a philosophical discussion might appear consistent with their known characters; and that a high political reputation might give authority to their remarks on government. Scipio and Laelius united both these requisites in a remarkable degree. They were among the earliest of the Romans who added the graces of Grecian taste and learning to the manly virtues of their own ruder country. These accomplishments had refined and polished their characters, without detracting at all from their force and purity. The very name of the Scipios, the *duo fulmina belli*, was the symbol of military talent, patriotism, magnanimity, and every private virtue. Laelius was somewhat less distinguished in active life; but enjoyed on the other hand a still higher reputation for contemplative wisdom, and was commonly styled the *Sage*. 'Such,' says Cicero very beautifully in the introduction to the treatise before us, 'was the common law of friendship between these excellent men, that when they were in actual service, Laelius adored Africanus as a god, on account of his transcendant military talents; and that Scipio, when they were at home, revered his friend, who was older than himself, as a father.' The two friends were not less remarkable for their taste and love of letters, than for other shining qualities. It is well known that they extended to the poet Terence—an African slave—the honor of their protection and intimacy; and it was the common report at Rome that they assisted this pure and sweet writer in the composition of his comedies. The poet alludes to this report himself in the prologue to the *Brothers*, and takes great pride in it, although he speaks of it as probably circulated for the purpose of injuring him.* The uncommon

* Nam, quod isti dicunt malevoli, homines nobiles
Eum adjutare, assidueque unà scribere;
Quod illi maledictum vehemens esse existumant,
Eam laudem hic ducit maxumam, cum illis placet,
Quí vobis universis et populo placent;
Quorum operâ in bello, in otio, in negotio,
Suo quisque tempore usu' est sine superbiâ.

Adelph. in prologo.

It is known, from several passages in the classical writers, that Scipio and Laelius were the persons alluded to in this prologue. Suetonius quotes a speech of a cer-

and lasting attachment of Scipio and Laelius to each other throws an additional grace over the virtues of both; and their real history affords a finer model of friendship, than any of the fabulous examples imagined by the poets. The kindred soul of Cicero—whose friendship for Atticus is another beautiful instance of a similar kind—appears to have been deeply struck with this charming assemblage of all the noblest and loveliest qualities of our nature. He alludes frequently to Scipio and Laelius in all his writings; and has introduced them as the principal speakers in the Dialogue on Friendship, as well as in the one before us.

The dialogue on Government is represented as having occupied three days; and was distributed into six books. Every second book began with a prologue, in which the author spoke in his own person. In the prologue to the first, the beginning of which is unfortunately lost, Cicero considers the question, how far it is the duty of a wise and virtuous man to engage in political affairs. He compares, at considerable length, the happiness and utility of contemplative and active life, and decides in favor of the latter. The author is here evidently pleading his own cause; and he does it indeed with a direct reference to the events of his own life. He next introduces his fable, by supposing himself to have heard in his youth from

tain Mummius, in which it was expressly stated that Scipio Africanus wrote the comedies which were brought out in the name of Terence. Cornelius Nepos mentions that Laelius was one day writing in his cabinet about the hour of supper, and kept his family waiting for him a considerable time. Upon coming out of his study he told them that he had never found himself in a better vein for composition; and then repeated some verses which are now to be found in the *Self-Tormentor* of Terence. Suetonius has preserved, in his life of Terence, the following curious epigram, which seems to show, that the friendship and patronage of these great men did not improve the worldly fortune of the ingenious African so much as might have been expected.

Dum lasciviam nobilium, et fucosas laudes petit;
Dum Africani vocem divinam inhiat avidis auribus;
Dum ad Furium se cœnitare et Lælium, pulchrum putat;
Dum se amari ab hisce credit, crebro in Albanum rapi
Ob florem ætatis suæ, ad summam inopiam redactus est.
Itaque e conspectu omnium abiit in Græciam in terram ultimam.
Mortuus est in Stymphalo, Arcadiæ oppido: nil Publius
Scipio profuit, nihil ei Lælius, nil Furius,
Tres per idem tempus qui agitabant nobiles facillime.
Eorum ille operâ ne domum quidem habuit conductitiam,
Saltem ut esset, quo referret obitum domini servulus.

Rutilius, a distinguished philosopher and a friend of Scipio, an account of a conversation on the principles of government, that was held in the gardens of Scipio by several Romans of the highest rank; and proceeds to relate the particulars of it, for the information of the friend to whom the dialogue was addressed, and whose name is lost. The groundwork being thus prepared, the dialogue commences between the principal speakers, who are passing the Latin holidays at Scipio's villa. After some preliminary discourse on the comparative importance of natural and moral philosophy, Scipio enters upon the main subject, and explains the origin of society and the value of the several modes of government. He states the respective advantages and disadvantages of the three simple forms; and prefers to either of them a system combining in some degree the distinguishing characteristics of all. This discussion occupies the remainder of the first book, which is nearly entire. The Roman Republic, being the principal example, then known, of the mixed form of government preferred by Scipio, he is naturally led to enter upon an analysis of the institutions of his own country; which occupies the greater part of the second book, and is little more than a very concise abstract of the known early history of Rome. Toward the close of the book, which is however mutilated and imperfect in this part, the conversation appears to have returned to the question of the comparative value of the different forms of government. It seems to have been maintained by Scipio that each was good in itself, but liable by abuse to degenerate into a corresponding form of tyranny; as monarchy into despotism, aristocracy into oligarchy, and democracy into anarchy. It was thus taken for granted that a just and upright administration of the government is more advantageous to a nation, than an unjust one; or, in other words, that the leading principles of politics and morals are the same. But, as this supposition may itself be called in question, the dialogue proceeds to a discussion of it; and one of the speakers is invited by Scipio and Laelius to plead the cause of injustice, although in opposition to his own opinion. This being done, the better side of the question is afterwards argued by Laelius; and it is in this part of the dialogue, that the famous passage on natural law, preserved in Lactantius, and so often cited by modern authors, was introduced. The discussion of this point appears to have

occupied almost the whole of the third book, of which unfortunately only a short fragment remains. Of the fourth and fifth, the fragments, as we have already observed, are still more scanty; and of the sixth there is nothing in the manuscript of M. Mai. As far as the contents of the fourth can be conjectured from the few passages, that are cited by former authors or have now been brought to light, the subject appears to have been a continuation, in reference to private morals, of the discussion of the value of good principles, which had been treated in the third in reference to public conduct. Of the fifth, we only know, from a passage in St Austin's *City of God*, that it began with a prologue, in which the author lamented, in his own person, the degenerate state of the political institutions of his country. The state of Rome in the time of Cicero could of course have no immediate connexion with the conversations of Laelius and Scipio. M. Villemain supposes, not without some degree of probability, that this subject was touched upon in the prologue by way of contrast; and that the main design of the book was to represent the situation of the republic at its most brilliant epoch, during which the scene of the dialogue is laid; when the manners of the people were uncorrupted and the institutions still in perfection. Of the sixth book, we only know that it contained a description of the ideal character of the perfect citizen; and that it concluded with the noble passage familiarly known as *the Dream of Scipio*. Such, as far as they are now ascertained, or can be conjectured, appear to have been the general plan and disposition of the work. It is easy to perceive that there could have been very little attempt in it at strict method or scientific precision; and that the merit was principally in the elevated tone of thought and feeling that pervades the whole discussion, and in the force and beauty of the style. We take for granted, that the work will be speedily reprinted in this country. In the mean time, we trust that we shall perform an agreeable service to the classical reader by offering him one or two extracts, in the way of specimen. They will of course rather excite than satisfy his curiosity; and will thus do no injury to the speculation of the future publisher. The prologue to the first book appears to be well adapted to this purpose, as it contains of itself a complete argument on the comparative utility and happiness of political and philosophical pursuits.

A part of the first section being lost, and the remainder not offering an entire train of thought, we begin our extract at the second section. We make no apology for quoting the original. The richness and majesty of the Latin language, as managed by Cicero, are quite unattainable in any of our modern dialects.

Nec uero habere uirtutem satis est, quasi artem aliquam, nisi utare. Etsi ars quidem, cum ea non utare, scientia tamen ipsa teneri potest; uirtus in usu sui tota posita est; usus autem eius est maximus ciuitatis gubernatio, et earum ipsarum rerum, quas isti in angulis personant, reapse, non oratione, perfectio. Nihil enim dicitur a philosophis, quod quidem recte honesteque dicatur, quod non ab his partum confirmatumque sit, a quibus ciuitatibus iura descripta sunt. Unde enim pietas? aut a quibus religio? unde ius aut gentium, aut hoc ipsum ciuile, quod dicitur? unde iustitia, fides, aequitas? unde pudor, continentia, fuga turpidinis, adpetentia laudis et honestatis? unde in laboribus et periculis fortitudo? Nempe ab his, qui haec disciplinis informata, alia moribus confirmarunt, sanxerunt autem alia legibus. Quin etiam Xenocraten ferunt, nobilem in primis philosophum, cum quaereretur ex eo, quid adsequerentur eius discipuli, respondisse, ut id sua sponte facerent, quod cogerentur facere legibus. Ergo ille ciuis qui id cogit omnis imperio legumque poena, quod uix paucis persuadere oratione philosophi possunt, etiam his, qui illa disputant, ipsis est praeferendus doctoribus. Quae etenim istorum oratio tam exquisita, quae sit anteponenda bene constitutae ciuitati, publico iuri, et moribus? Equidem quemadmodum urbes magnas atque inperiosas, ut appellat Ennius, uiculis et castellis praeferendas puto, sic eos qui his urbibus consilio atque auctoritate praesunt, his qui omnis „negotii publici expertes„ sint, longe duco sapientia ipsa esse anteponendos. Et quoniam maxime rapimur ad opes augendas generis humani, studemus-

que nostris consiliis et laboribus tutiorem et opulentiorem uitam hominum reddere, et ad hanc uoluptatem ipsius naturae stimulis incitamur; teneamus eum cursum, qui semper fuit optimi cuiusque; neque ea signa audiamus, quae receptui canunt, ut eos etiam reuocent, qui iam processerint.

His rationibus tam certis tamque inlustribus opponuntur ab his, qui contra disputant, primum labores qui sint re publica defendenda sustinendi: leue sane inpedimentum uigilanti et industrio; neque solum in tantis rebus, set etiam in mediocribus uel studiis uel officiis vel vero etiam negotiis contemnendum. Adiunguntur pericula uitae, turpisque ab his formido mortis fortibus uiris opponitur: quibus magis id miserum uideri solet, natura se consumi et senectute, quam sibi dari tempus, ut possint eam uitam, quae tamen esset reddenda naturae, pro patria potissimum reddere. Illo uero se loco copiosos et disertos putant, cum calamitates clarissimorum uirorum, iniuriasque iis ab ingratis inpositas ciuibus colligunt. Hinc enim illa et apud Graecos exempla, Miltiadem uictorem domitoremque Persarum, nondum sanatis uolneribus iis, quae corpore aduerso in clarissima uictoria accepisset, uitam ex hostium telis seruatam, in ciuium uinclis profudisse: et Themistoclem patria, quam liberauisset, pulsum atque proterritum, non in Graeciae portus per se seruatos, sed in barbariae sinus confugisse, quam adflixerat. Nec uero leuitatis Atheniensium crudelitatisque in amplissimos ciuis exempla deficiunt: quae nata et frequentata apud illos, etiam in grauissimam ciuitatem nostram dicuntur redundasse. Nam uel exilium Camilli, uel offensio commemoratur Ahalae, uel inuidia Nasicae, uel expulsio Laenatis, uel Opimi damnatio, uel fuga Metelli, uel acerbissima ·C· Mari clades, principum caedes, uel eorum multorum pestes, quae paulo post secutae sunt. „ Nec vero iam meo nomine abstinent.„ Et credo quia nostro consilio ac periculo sese in illa uita atque otio

conseruatos putant, grauius etiam de nobis queruntur et amantius. Sed haud facile dixerim cur cum ipsi discendi aut uisendi causa maria tramittant * * * * * * saluam esse, consulatu abiens, in contione ·P·R· idem iurante iuravissem, facile iniuriarum omnium compensarem curam et molestiam. Quamquam nostri casus plus honoris habuerunt quam laboris; neque tantum molestiae, quantum gloriae; maioremque laetitiam ex desiderio bonorum percepimus, quam ex laetitia improborum dolorem. Sed si aliter, ut dixi, accidisset, qui possem queri? cum mihi nihil inprouiso, nec grauius quam expectauissem pro tantis meis factis euenisset? Is enim fueram, cui cum liceret aut maiores ex otio fructus capere, quam ceteris, propter uariam suauitatem studiorum, in quibus a pueritia uixeram; aut siquid accideret acerbius uniuersis, non praecipuam sed parem cum ceteris fortunae condicionem subire; non dubitauerim me grauissimis tempestatibus ac paene fluminibus ipsis obuium ferre, conseruandorum ciuium causa, meisque propriis periculis parere commune reliquis otium. Neque enim hac nos patria lege genuit aut educauit; ut nulla quasi alimenta expectaret a nobis, ac tantummodo nostris ipsa commodis seruiens, tutum perfugium otio nostro suppeditaret, et tranquillam ad quietem locum; sed ut plurimas et maximas nostri animi, ingenii, consilii partis ipsa sibi ad utilitatem suam pigneraretur; tantumque nobis in nostrum priuatum usum, quantum ipsi superesse posset, remiteret.

Iam illa perfugia, quae sumunt sibi ad excusationem, quo facilius otio perfruantur, certe minime sunt audienda; cum ita dicunt, accedere ad rem publicam plerumque homines nulla re bona dignos, cum quibus comparari sordidum, confligere autem, multitudine praesertim incitata, miserum et periculosum sit. Quam ob rem neque sapientis esse accipere habenas, cum insanos atque indomitos impetus uolgi cohibere non

possit, neque liberalis, cum impuris atque inmanibus aduersariis decertantem, uel contumeliarum uerbera subire, uel expectare sapienti non ferendas iniurias: proinde quasi bonis et fortibus et magno animo praeditis ulla sit ad rem publicam adeundi causa iustior, quam ne pareant improbis, neue ab isdem lacerari rem publicam patiantur, cum ipsi auxilium ferre si cupiant, non queant.

Illa autem exceptio cui probari tandem potest, quod negant, sapientem suscepturum ullam rei publicae partem, extra quam si eum tempus et necessitas coegerit? quasi uero maior cuiquam necessitas accidere possit, quam accidit nobis; in qua quid facere potuissem, nisi tum consul fuissem? consul autem esse qui potui, nisi eum uitae cursum tenuissem a pueritia, per quem equestri loco natus peruenirem ad honorem amplissimum? Non igitur potestas est ex tempore, aut cum uelis, opitulandi rei publicae, quamuis ea prematur periculis, nisi eo loco sis, ut tibi id facere liceat. Maximeque hoc in hominum doctorum oratione mihi mirum uideri solet, quod qui tranquillo mari gubernare se negent posse, quod nec didicerint nec umquam scire curauerint, eidem ad gubernacula se accessuros profiteantur excitatis maximis fluctibus. Isti enim palam dicere, atque in eo multam etiam gloriari solent, se de rationibus rerum publicarum aut constituendarum aut tuendarum, nihil nec didicisse umquam nec docere; earumque rerum scientiam non doctis hominibus ac sapientibus, sed in illo genere exercitatis concedendam putant. Quare qui conuenit polliceri operam suam rei publicae tum denique, si necessitate cogantur? cum, quod est multo procliuius, nulla necessitate premente rem publicam regere nesciant. Equidem, ut uerum esset sua uoluntate sapientem descendere ad rationes ciuitatis non solere; sin autem temporibus cogeretur, tum it munus denique non recusare; tamen arbitrarer hanc rerum

ciuilium minime neglegendam scientiam sapienti, propterea quod omnia essent ei praeparanda, quibus nesciret an aliquando uti necesse esset.

Haec plurimis a me uerbis dicta sunt ob eam causam, quod his libris erat instituta et suscepta mihi de re publica disputatio; quae ne frustra haberetur, dubitationem ad rem publicam adeundi in primis debui tollere. Ac tamen siqui sunt, qui philosophorum auctoritate moueantur, dent operam parumper adque audiant eos, quorum summa est auctoritas aput doctissimos homines et gloria: quos ego existimo, etiam si qui ipsi rem publicam non gesserint, tamen quoniam de re publica multa quaesierint et scripserint, functos esse aliquo rei publicae munere. Eos uero septem, quos Graeci sapientis nominauerunt, omnis paene uideo in media re publica esse uersatos. Neque enim est ulla res, in qua propius ad deorum numen uirtus accedat humana, quam ciuitatis aut condere nouas aut conseruare iam conditas.

Quibus de rebus, quoniam nobis contigit, ut idem et in gerenda re publica aliquid essemus memoria dignum consecuti et in explicandis rationibus rerum ciuilium quandam facultatem non modo usu sed etiam studio discendi et docendi essemus auctores; cum superiores ali fuissent in disputationibus perpoliti, quorum res gestae nulla inuenirentur; ali in gerendo probabiles, in disserendo rudes: nec uero nostra quaedam est instituenda noua et a nobis inuenta ratio, sed unius aetatis clarissimorum ac sapientissimorum nostrae ciuitatis uirorum disputatio repetenda memoria est, quae mihi tibique quondam adulescentulo est a ·P· Rutilio Rufo, Zmyrnae cum simul essemus, compluris dies exposita, in qua nihil fere quod magno opere ad rationes omnium rerum pertineret praetermissum puto.

After the characters are introduced, the conversation turns at first upon the comparative importance of natural and moral science; by the former of which seems to be chiefly intended

the contemplation and study of the general system of the universe. Scipio extols, at considerable length, the interest and value of these pursuits; and, in the course of his remarks, introduces the following passage, which we think not inferior either in sublimity of thought or splendor of language to the very best pages of its author.

Quid porro aut praeclarum putet in rebus humanis, qui haec deorum regna perspexerit? aut diuturnum, qui cognouerit quid sit aeternum? aut gloriosum qui uiderit quam parua sit terra, primum uniuersa, deinde ea pars eius quam homines incolant; quamque nos in exigua eius parte adfixi, plurimis ignotissimi gentibus, speremus tamen nostrum nomen uolitare et uagari latissime? Agros uero et aedificia et pecudes et inmensum argenti pondus adque auri qui bona nec putare nec appellare soleat, quod earum rerum uideatur ei leuis fructus, exiguus usus, incertus dominatus, saepe etiam teterrimorum hominum inmensa possessio? Quam est hic fortunatus putandus, cui soli uere liceat omnia non Quiritium set sapientium iure pro suis uindicare! nec ciuili nexo, sed communi lege naturae, quae uetat ullam rem esse cuiusquam nisi eius qui tractare et uti sciat: qui inperia consulatusque nostros in necessariis non in expetendis rebus, muneris fungendi gratia subeundos, non praemiorum aut gloriae causa adpetendos putet; qui denique ut Africanum auum meum scribit Cato solitum esse dicere, possit idem de se praedicare, numquam se plus agere, quam nihil cum ageret; numquam minus solum esse, quam cum solus esset. Quis enim putare uere potest plus egisse Dionysium tum cum omnia moliendo eripuerit ciuibus suis libertatem, quam eius ciuem Archimedem cum istam ipsam sphaeram, nihil cum agere uideretur, de qua modo dicebatur, effecerit? Quis autem non magis solos esse qui in foro turbaque quicum conloqui libeat non habeant, quam qui nullo arbitro uel secum ipsi loquantur, uel quasi doctissimorum hominum in concilio atsint, cum eorum inuentis scribtisque se

oblectent? Quis uero diuitiorem quemquam putet, quam eum cui nihil desit, quod quidem natura desideret? aut potentiorem quam illum, qui omnia quae expetat, consequatur? aut beatiorem quam qui sit omni perturbatione animi liberatus? aut firmiore fortuna, quam qui ea possideat, quae secum, ut aiunt, uel e naufragio possit ecferre. Quod autem imperium, qui magistratus, quod regnum potest esse praestantius, quam despicientem omnia humana, et inferiora sapientia ducentem, nihil umquam nisi sempiternum et divinum animo uolutare? cui persuasum sit, appellari ceteros homines, esse solos eos qui essent politi propris humanitatis artibus? Ut mihi Platonis illut, seu quis dixit alius, perelegans esse uideatur; quem cum ex alto ignotas ad terras tempestas et in desertum litus detulisset, timentibus ceteris propter ignorationem locorum, animaduertisse dicunt in arena geometricas formas quasdem esse descriptas; quas ut uidisset, exclamauisse ut bono essent animo; uidere enim se hominum uestigia: quae uidelicet ille non ex agri consitura, quam cernebat, ced ex doctrinae indiciis interpretabatur. Quam ob rem, Tubero, semper mihi et doctrina et eruditi homines et tua ista studia placuerunt.

It is difficult at first to recognize the character of a merely human philosophy in these lofty aspirations after a purer and more intellectual state of being; and one is almost tempted to apply to the Roman orator the supposition of the early christian fathers in regard to Plato, that he was divinely endowed by anticipation with the spirit of our religion.

These extracts will convey to the reader a better notion of the literary merit of the dialogue before us, than any critical remarks that we could offer. We shall now proceed to lay before him the few ideas that have occurred to us, in regard to the philosophical or scientific value of the theories contained in it. We have already observed that the author did not probably intend to furnish a complete system of political science; and if he did, the mutilated state of the dialogue would not permit us to judge very accurately of its value.

In the part that remains, two or three of the most important subjects connected with general politics, are, however, successively touched upon; to wit, the origin of society, the comparative advantages of different forms of government, and the constitution of the roman Republic. We shall briefly notice the opinions maintained in the dialogue upon each of these topics.

On the first point the theory of the author is extremely satisfactory; and the more so, as it wears, at the present day, an appearance of novelty, in consequence of the great temporary popularity that has lately been obtained by a different one. In the work before us, the origin of society is referred to the plain and simple cause of the social instinct, which forms one of the principles of our nature. 'A nation,' says the author, 'is a collection of individuals united by a common law and a common government. The origin of such an union is not the weakness of man in an individual state; but the social instinct of our nature. We are not formed to live separately from each other, and wherever men are found, it is in a state of society.' Such is the beginning of the passage in which the author expressed his ideas upon this subject; and of which the remainder is unfortunately lost by a break in this part of the manuscript. But though we are thus deprived of the development of the theory, we see very clearly in these few words the leading principle. The same doctrine is held by some of the most distinguished modern writers, particularly Grotius. Montesquieu, a still higher authority, lays it down in his precise and pointed way in the Persian letters. 'I never hear any body talk of public law,' he observes, 'without beginning with a painful inquiry into the origin of society. This appears to me to be quite a superfluous labor. If men did not easily enter into social union, if they naturally avoided and hated each other, the inquiry would be more reasonable. But they are all united together by birth. A son is born by the side of his father, and there he stays. This is society, and the origin of society.'

However simple and self-evident this theory may appear, it is well known that some philosophers of considerable reputation, as for example Hobbes, have denied the existence of a social instinct; and maintained that the natural relation

between individuals is that of hostility. This opinion never obtained much popularity. Another doctrine, somewhat less paradoxical but equally incorrect, received, about the middle of the last century, from the ingenious sophistry and enthusiastic eloquence of Rousseau, a great temporary currency; and is admitted by many even at present. In this theory men in a natural state are not considered as absolutely hostile to each other; but each individual is supposed to be wholly isolated, and disconnected from all the rest. Society is regarded as an artificial institution, formed by a special contract among these individuals, existing previously in their natural state of separation. The obligation to obey the laws and to discharge the other social duties, is made to result from the obligation we are under to perform this engagement, into which we have entered, or our ancestors for us. Such is the famous system of the *social contract*, which attracted so strongly the public attention, when exposed by Rousseau in his celebrated treatise under that title, and has been, perhaps, the one most generally received even since his time. Besides the radical error involved in it of considering society as an artificial state, it fails altogether in establishing the social duties on any tenable ground. I have entered into a contract to obey the laws and promote the general good, and therefore I am bound to do so. But why am I bound to perform a contract? This question is as difficult to answer as the other; and in the work of Rousseau there is no attempt at a solution of it. In fact the system in question precisely reverses in this particular the natural order of cause and effect. Instead of being under an obligation to discharge the social duties because we are bound to perform our contracts, we are under no other moral obligation to perform contracts, than because it is one of our social duties to do so; that is, one of the developments and particular forms of the general law of nature, which commands us to live in society and to promote each other's good. The theory of Rousseau, therefore, even admitting its correctness, furnishes no solution of the problem of society; or rather tends directly to the dissolution of social institutions in all their different forms.

The error of this writer, considerable as it is, was not, however, wholly unnatural. Although the existence of society is determined by an original law of nature, the formal institutions

necessary for managing the common interests of the members of every particular society, are of course, in a great measure, arbitrary. They must, therefore, be settled by mutual agreement; and can have no binding force any farther than they have obtained the assent, express or implied, of a majority at least of the persons upon whom they operate. These institutions, taken together, make up the constitution or government of a country; and hence every lawful government is founded in reality on a social contract express or implied. The error of Rousseau lies in mistaking the form of society for the substance; and regarding the social union itself as founded in convention, because the special rules which are necessary for transacting the common affairs of such an union can have in justice no other origin.

Of these forms of government, established in different states, no two are precisely similar; but they have generally been distributed by political writers, conformably to certain leading characteristics, under the three principal heads of monarchy, aristocracy, and democracy. This mode of classification was adopted by the ancients; and has been maintained and refined upon by the most intelligent of the moderns. The next subject taken up in the dialogue before us, is the question of the comparative value of these different forms. The reasoning upon this topic is far from being so precise and satisfactory as that upon the former. The leading principles seem to be, that each of the simple forms is good when administered with justice; that each is liable by abuse to degenerate into an analogous form of tyranny or misgovernment; and that a compound form, uniting, in some degree, the characteristics of the three, is preferable to either. Now the fact that the three simple forms are all good when well administered, and all liable to abuse, has no tendency to shew which of them is the best, or that a form compounded of all is better than either. We know that every thing good may be abused. The real questions, which are not touched upon here, would be, which of the three is least liable to abuse, and produces the best effects when well administered; and whether a compound form produces better effects and is less liable to abuse, than the simple ones. In regard to this latter point, it seems to be taken for granted by Cicero, that, because the three forms are all liable to abuse, a compound form must of course be less so than

either. Without admitting or disputing the correctness of this conclusion, it is sufficient to remark, that it does not follow from the premises; and if true, must be proved in some other way. If a compound form of government be better than any of the simple ones, merely as compound, it must be because it is supposed to combine the advantages of all three. But for the same reason it must also be supposed to combine their disadvantages; and thus the argument would make out this form to be at the same time the best and the worst of all. The value of this, as of the other forms of government, must be settled by an accurate examination of its theory, and practical effects; which is not attempted in the work before us. It will of course not be expected that we should enter here into the discussion of so extensive a question.*

* Most of these disputes, respecting the comparative value of different forms of government, are entirely verbal. Nothing can be more vague than the meaning of the names of the three simple forms; and one or two accurate definitions would be found, in general, to remove entirely the subject of controversy. This result actually happened in the case of an attempt at an argument upon the respective merits of the monarchical and republican forms of government, made in France by the Abbé Sièyes and our well known countryman Thomas Paine. About the time of the adoption of the constitution of 1791, Sièyes had been accused by the aristocratic party of being no better than a republican in disguise. This was probably true, taking the term *republican* in the sense in which they understood it: but the time not being ripe for throwing off the mask, he thought it necessary to defend himself from the imputation: and published a letter in the *Moniteur*, in which he not only denies the charge, but offers to enter the lists with any honest republican, and to prove to him, that the citizen enjoys more liberty in a monarchy, than he does in a republic. The author of the Rights of Man, then acting as a missionary of liberty in *partibus infidelium*, felt himself piqued by this public defiance; and wrote to Sièyes two days after, in the *Moniteur*, that, though he was just on the point of setting off for England, he would accept the challenge with pleasure, and would undertake to make good his point within the compass of fifty pages. He professes the highest respect for the talents and character of his adversary; and even avows that he is no personal enemy to kings, but sincerely wishes, on the contrary, to see them all enjoying the honorable and happy condition of private citizens. The objects of his aversion are the miseries and vices that attend the monarchical form of government; or, in one word, the *whole hell of monarchy*. In the course of his letter he remarks, by way of explaining his views, that he does not mean by a *republic* the form of government established under this name in Holland, or in Italy, or in any other single country; but that he means a representative government, founded on the basis of the rights of man, as proclaimed in the declarations of France and America. The wily Abbé, entertaining probably the same opinion at bottom, or perhaps repenting by this time of his rather imprudent offer of engaging in a public controversy, upon a point so delicate in its reference to the French politics of that day, proceeds to escape from the difficulty by a definition of terms. He begins his explanation, published a week after in the *Moniteur*, with a number of compliments to the talents and services of his adversary, and offers him the tribute of his gratitude and high esteem. He then observes, that Mr Paine supposes him to have given a challenge,

The third principal subject which is treated by Cicero, in the dialogue before us, is the constitution of the Roman Republic. The part of his remarks now extant is however a mere abstract, in a very concise and even meagre form, of the early history of his country. Much of the second book, in which this inquiry is entered upon, is unfortunately lost; and the fourth, in which there is some reason to suppose that it was taken up again, has entirely perished. In a scientific point of view, the loss of this part of the work is perhaps more to be regretted than that of the rest. An analysis of the political institutions of Rome by Cicero must have conveyed much instruction upon various points, that are now uncertain; and that will never perhaps be fully explained, unless some of the other lost treatises of the ancients upon the subject shall hereafter be brought to light. The historical abstract given by Cicero, is distinguished by the same elevation of thought and majesty of style, that prevail through all his works, but throws no additional light upon the events of the period he describes. He makes no use of critical rules in selecting his facts; and acquiesces without hesitation in the current traditions of the country, as we find them recorded in Livy and the other historians. The correctness of these traditions has been much questioned in the course of the last century; and the inquiry may be considered as one of the most curious and interesting historical problems. M. Ville-

and accepts it; that he has not given a challenge, but that, nevertheless, he should be very happy to furnish so distinguished an author with an occasion of publishing some more truths; and that as a preliminary to the argument, it is only necessary to come to an understanding in regard to the terms of the question. He states that, as Mr Paine does not mean by a *republic* the form of government existing in Holland, or in Italy, so he is far from understanding, by *monarchy*, the constitutions of Turkey or of England; that he does not propose to defend *the whole hell of monarchy*, or any other hell, but simply *monarchy;* and that, by monarchy, he does not understand a despotism, or even a hereditary royalty, but a government in which MONOS, *a single person*, ARCHETAI, *exercises the chief magistracy;* that this single person may be elective in a monarchy, as well as in any other form; and that the opposite of monarchy is not an elective, or a representative government, but a *polyarchy*, or a government in which POLLOI, *several persons*, exercise the chief magistracy; that the term *republic* does not indicate any particular form of government, but means a government or body politic in general; and that the question between him and Mr Paine, precisely stated, is the following: *whether monarchy or polyarchy be the better form of a republic.* The ground of the controversy being thus narrowed, it does not appear that our countryman thought it worth his while to engage in it; and the decisive fifty pages were never written. The explanation of Sièyes, as the reader must perceive, is little better than a *jeu d'esprit:* but it serves to shew the vagueness of the terms.

main has recapitulated, in a summary way, the *pro* and *con* of this argument in a pretty long note, which we think our readers will not be displeased to see entire. It is as follows:

'Cicero now proceeds to examine the state of Rome at the different periods of its history, beginning with the kings. This inquiry would be more interesting, perhaps, than any speculative discussion, if it presented a new view of the Roman history. But the author adheres constantly to the current traditions; and his reflections suppose the same facts that are given by Livy and the other historians. Most of these facts, especially such as relate to the earlier periods of the city, have, as is well known, been controverted by modern critics. This subject, which has lately been revived in Germany, was much discussed by our own [the French] writers of the seventeenth century. There is a dissertation by M. de Pouilly, in the sixth volume of the Memoirs of the Academy of Inscriptions, in which he attempts to prove that the history of Rome, for the two or three first centuries, is wholly destitute of authenticity. He states that the earliest historians, Cincius and Fabius Pictor, lived at least five hundred years after the date of the foundation of the City; and that all the ancient documents, which they might have otherwise consulted, must have perished at the burning of Rome by the Gauls. He then shows that several facts related by Livy, are manifestly copied from Greek traditions. Thus, the story of the Horatii and Curiatii, with all its marvellous and romantic circumstances, including the love of the sister of the conqueror for one of the conquered, and her assassination by her brother, is to be found in a fragment of the *Arcadica* of Demaratus, extant in Stobæus; and is told as a part of the history of the wars of the two Arcadian cities, Tegea and Pherea. M. de Pouilly also discovers the character of Scævola in a Greek hero celebrated by Agatharcides. He then shews that the traditions of the Romans are often contradicted by foreign testimony. Thus the account given in Livy of the defeat of the Gauls by Camillus, in the midst of the ruins of Rome, is shaken by Polybius, who states, that after besieging the capitol nine months, they voluntarily retired upon hearing that their own territory had been invaded by the Venetians. From these and other facts this writer draws the conclusion that, independently of the manifestly fabulous character of a part of this history, the accounts which appear

more probable are entitled in reality to very little credence. The same opinion is supported by additional proofs and observations, in the curious dissertation of Beaufort on the uncertainty of the early history of Rome.

This theory was however contested at the time by other very learned men. Sallier, also a member of the Academy of Inscriptions, answered the objections of his colleague in two able memoirs. He establishes, in these papers, the existence of documents earlier than the fifth century of Rome, which were consulted by the most ancient historians. Cicero mentions these documents in his treatise on the orator. 'From the very foundation of Rome, he observes, down to the time of the high-priest Publius Mucius, it was the duty of the high-priest to make up every year a register of the principal events that had happened, and to inscribe it upon tablets preserved in his house, to which the public had access. This register is commonly called the *great annals.*' In another passage, Cicero, speaking of the same collections, inquires: 'Where, but in the annals, are we to look for an account of our wars; and of all our political history? where can we find a richer storehouse of great examples and incontrovertible authorities for use in conduct and in speech?' In a third passage he also draws conclusions from these ancient documents in regard to the eloquence of the early speakers; and finally mentions them in his treatise on Law, where he avows, at the same time, that the Romans had not then any history worthy of the title, and introduces Atticus inviting him to undertake such a work. Here then we have certain proofs of an uninterrupted series of annals, written by the high-priests, giving an account of a great number of events, and including even some notice of the orations delivered before the senate and the people. Of this class probably were the ancient collections, the books of the Augurs and the hymns of the Salian priests, from which Varro had obtained the complete acquaintance with the Roman antiquities, for which he was so much admired by Cicero. To this class of documents must be added the acts of the government, such, for example, as the tables of the enumerations or *Census*, spoken of by Dionysius of Halicarnassus, and from which Varro quotes a passage in his work on the Latin language; the ancient treaties, one of which is mentioned by Dionysius, in the following passage:

"We see at the present day, in the temple of Jupiter Fidius, called by the Romans *Sancus*, the treaty made by Tarquin with the Gabians. It is written entire upon a wooden shield covered with leather." Polybius quotes at full length a commercial treaty made with the Carthaginians soon after the establishment of the republic under the consulship of Junius Brutus and Marcus Horatius; and states that the original was deposited in the archives of the Ediles, near the temple of the Capitoline Jupiter. These documents were so numerous, according to Suetonius, that when the capitol was burnt, in the time of Vespasian, there were destroyed or lost no less than three thousand brazen tablets, inscribed with the decrees of the senate and of the people, and other public acts. This collection was renewed by Vespasian from other sources. It is well known that the laws of the twelve tables were extant in the time of Cicero; and it is even probable that some of those made in the time of the kings were also preserved, as short fragments of them are cited by Aulus Gellius and Servius. Finally, Livy alludes repeatedly to books written on linen, *libri lintei*, which can only have been the public annals of some very remote period. Here, then, we have a great variety and abundance of public documents which the early historians had at their disposal, and appear to have employed; and which must be admitted to establish to a certain extent the authenticity of their accounts. Still, however, there are very great improbabilities in some of these accounts; as, for example, in the length of time supposed to be occupied by the reigns of seven elective kings, three of whom were assassinated, and one dethroned; and who are yet said to have reigned in the whole two hundred and forty-two years, giving a mean length of nearly forty years for each reign, while, according to the calculations of Newton, the mean length of an hereditary king's reign is only about twenty. What are we to think of the public works attributed to Ancus Martius, and supposed to have been finished in the hundredth year of the City, which are yet so magnificent, that in the time of the Republic they could hardly be kept in repair, and have long since fallen to ruin? Could these have been executed by a half-civilized city still in its infancy? Cicero himself admits, that of the history of Rome under the kings, we really know with certainty nothing but their names. We have

thus endeavored to expose in a general way the leading points on both sides of the question. The conclusion from the whole would be, that the early history of Rome is in every way so doubtful, that there is even room to doubt the propriety of doubting it.'

We confess that we cannot help thinking the learned Frenchman's conclusion more pointed than correct. If Cicero, with all the means that he possessed of obtaining the most accurate information upon the subject, still affirmed that of the whole mythological and poetical narrative entitled *the history of Rome under the kings*, there was nothing certain but the names of these magistrates, we cannot admit that it is possible at the present day to doubt the propriety of doubting the authenticity of this history*. M. Villemain, or the writers from whom he borrows his opinion, have involved the question in unnecessary obscurity, by not distinguishing sufficiently the period to which it relates. From the date of the beginning of the Republic, or soon after, it is generally admitted that the history of Rome is in the main authentic, although subject to criticism in its details; and the whole mass of public documents relied upon by M. Villemain's authorities with one or two single exceptions, and these doubtful, are posterior to that date. The uncertain period is that of the kings; and there is no evidence, nor any reason to suppose, that the account we have of it was made up from any public documents whatever. The Roman history of Mr von Niebuhr, the present Prussian minister at Rome, treats this subject in a very satisfactory way. A field of inquiry has lately been entered upon by the scholars of Europe, from which we may ultimately expect some new light upon this question; we mean the investigation of the affinities of languages. It has been ascertained of late that the Sanscrit or sacred language of India, the Greek and Latin languages, and the Teutonic dialects of modern Europe, are all founded on a common basis; and that the resemblance is peculiarly remarkable between the Sanscrit and Latin forms of this widely extended tongue. This resemblance supposes of course a connexion of some kind or other between the nations that spoke them, and a thorough research into the ample monuments of Indian literature, may be expected to illustrate very considerably the

* See the Review of Mr von Niebuhr's work, in our last number.

ancient history of Italy, and perhaps of Rome. Indeed, the mere comparison of the languages can hardly fail to produce very important results of this description. This inquiry, however, is just in its outset; and must be pursued exclusively by the grammarians for a long time to come, before the historian and the philosopher will be able to turn the fruits to account.*

3. We have extended the second division of our article to such a length that we have left ourselves but little space for the third, in which we intended to notice the labors of the French editor upon the dialogue before us. To pass them over in silence would be doing injustice to one of the most elegant and promising scholars of France, and of Europe. M. Villemain, now at the age of about thirty, has been for some years a member of the French Academy, and is well known in the literary world by several published works of great merit. His style is one of the purest and most elegant models of French prose, that has been exhibited for the last half-century; and the facility, with which he writes, is not less remarkable than the accuracy and beauty of his language. He also possesses a singular talent for extemporisation; and is now delivering lectures on history to audiences of two or three thousand persons belonging to the first circles in the capital of France. His contributions to the edition of the Republic, consist, as we have stated above, of a translation of the text, a preliminary discourse, a few notes, and three dissertations of considerable length, intended to illustrate the probable subjects of the three last books. They are all

* The eminent German scholar, Baron A. W. Schlegel, professor at the new university of Bonn in Prussia, seems to be the person now most deeply engaged in this inquiry. He publishes a journal, devoted exclusively to these researches, under the title of the Indian Library, *Indische Bibliothek*, of which three numbers only have yet appeared. In the last of these, published during the last year, he announces that he has in preparation a work on the affinity mentioned in the text between the eastern and western dialects of the ancient continent, which he proposes to print under the following title. *Etymologicum novum; sive Synopsis linguarum; qua exponitur parallelismus linguae Brachmanum sacrae cum lingua Graeca et Latina; cum reliquiis linguae Etruscae, Oscae, ceterarumque indigenarum veteris Italiae dialectorum; denique cum diversis populorum Teutonicorum linguis, Gothica, Saxonica, Francica, Alemannica, Scandica, Belgica.* The name of the SANSCRIT language is one of the most obvious and striking examples of its affinity with the Latin. It signifies *holy writing* and is equivalent to the Roman SANCTUM SCRIPTUM. The prepositions and other particles, which are among the essential and radical parts of languages, have a remarkable correspondence through the whole of these dialects. Take, for example, those which express originally the local position of one thing above another. *English*, OVER, UP, UPPER. *German*, UBER. *Gothic*, UFAR. *Latin*, SUPER. *Greek*, HUPER. *Sanscrit*, UPARI.

beautifully written; and give proofs at the same time of a very minute and extensive acquaintance with the classic authors. The translation represents the original, as well probably as it could be represented in a dialect, less capable than almost any other of imitating the majesty and richness of the Latin. The notes are scanty and the one quoted above is the only one of much interest. The preliminary discourse and the three dissertations are the most valuable parts of the editor's labors; and without perhaps containing any wholly original views, convey to the general reader much valuable instruction clothed in the most agreeable and popular form. The discourse contains a general history and review of the dialogue. The first dissertation is an inquiry concerning the social habits of the Romans, their amusements, their modes of education, their prevailing virtues and vices, and the general course of their private life. The second is an essay on the political institutions of the Republic, as they existed at the time when the scene of the dialogue is laid; and the third examines the curious subject of the established religion. The reader will easily imagine that these important questions are not exhausted in a few short papers, occupying, in the whole, somewhat less than two hundred pages. But two hundred pages may be made to contain more valuable matter than one would at first thought suppose, when their contents are compiled with taste and good judgment from the best sources; and few readers will peruse these dissertations without profit as well as pleasure. The second contains a number of valuable suggestions in relation to the Roman government. After all that has been written upon this subject, it is astonishing how little is really known with certainty respecting it; and how many points which one would have expected to find matters of public notoriety are very imperfectly understood. The constitution of the senate, for example, is far from being so accurately known as might have been anticipated from its great importance and publicity. At the risk of protracting this article to a tedious length, we shall venture to extract M. Villemain's remarks upon this head. It is curious to compare the ideas and usages of the Romans with those of the present age upon a question, which is now considered so very important and interesting as the constitution of the principal legislative body. At Rome it seems to have engaged but

little attention; and through all the long disputes of the Patricians and the Plebeians, we do not find that the demand of a radical reform of the senate was ever made by either party.

'The principles,' says M. Villemain, 'upon which the senate was constituted at the different periods of the Republic, have been the subject of much discussion, but are not yet fully understood. More than a century ago, a celebrated British statesman proposed this question to Vertot, the author of the *Revolutions of Rome*, who had wholly omitted to notice the point in his work. He wrote in answer a very ingenious dissertation, which is now printed with the Revolutions. Middleton treated the subject with greater ability; and Beaufort has also examined it in his *History of the Roman Government*. After all, the question is still doubtful. In the first instance, the senators were appointed by the king according to the accounts we have of this early period; but these accounts, supposing them authentic, afford, of course, no explanation of the constitution of the senate after the change of government. Livy states, in one passage of his history, that after the expulsion of Tarquin, the consul, Brutus completed the number of the senators to three hundred. This passage seems to intimate that the new senators were appointed by the consul; but in another passage the same historian represents the tribune Cornelius as stating, that the senators were formerly appointed by the king, but afterwards by *order of the people*. The phrase *order of the people*, may perhaps however be understood as an allusion to the source of the consular authority. If the senators had been chosen directly by the people, it seems probable that we should have had accounts of some of the elections which must, in that case, have been at times very warmly contested. The probability, therefore, is that after the expulsion of the kings, the senators were appointed by the consuls until the introduction of the magistracy of the censors in the year 310, the intervening time being about sixty years. As long as the consulate was an exclusive privilege of the Patricians, it is probable that the senators were all taken from this order; but there is no reason to suppose that the mere quality of Patrician conferred of itself the senatorial character. At this period the senators do not appear to have held their places for life. A census

or enumeration of the people, was taken every five years; and at these times the consuls or military tribunes appear to have made out a list of the senators at their own discretion, omitting the former members, and appointing new ones, as they thought proper. It does not even seem that at this period it was thought dishonorable to the character of a senator to be omitted in the new list. When the office of censor was created, the appointment of the senators devolved upon these magistrates; and soon after it became dishonorable to be excluded from the list. This fact is expressly stated by the grammarian Festus. 'In ancient times,' he observes, 'it was not thought disgraceful to a senator to be excluded in the making up of the new list. The kings admitted into the public council, and removed from it, at pleasure, such persons as they thought proper; and the consuls and military tribunes generally appointed their own relations among the Patricians and afterwards among the people. But the law of the tribune Ovinius made it the duty of the censors to appoint the best men from all the classes; and after that time it became dishonorable to be excluded.'

It is therefore certain that after the introduction of the censors these magistrates had a very considerable influence in the appointment of the senators; but we have no means of ascertaining the precise character of their functions in this respect, or the restrictions under which they exercised them. The Ovinian law, cited by Festus, which probably regulated the details relating to this subject, is not extant. Livy, in speaking of the authority of the censors in this respect, employs the phrases—*read the list of the senate—make out the list of senators.* It appears, however, from different passages in the classical writers, that after this period the old senators were retained for life unless there were particular reasons to the contrary; and that the exercise of the more important magistracies called *curule* gave the right of admission to the senate. This right, however, required the confirmation of the censor; but when the censorship was interrupted, seems to have been exercised without. This appears by the example of Cicero himself, who took his seat in the senate by virtue of having held the office of quæstor at a time, when, in consequence of the civil wars of Marius and Sylla, the censorship was vacant for seventeen years. The office of tribune also

gave admission to the senate by virtue of a law passed in the year 623. We learn from Dionysius of Halicarnassus that a certain age was necessary; but what it was is not precisely known. There was a difference at first between the Patrician and the Plebeian senators, the former being called *fathers*, and the latter *conscript fathers;* but Cicero always employs the latter title in addressing the whole senate. A qualification of property seems also to have been required, at least in the later periods of the Republic; but it is certain that the *curule* magistracies conferred this dignity of themselves and without regard to any other condition. Thus the Patricians, as well as the Plebeians, were obliged to obtain the public favor by giving proofs of talent and virtue, before they could gain admission into the senate; and hence this body was generally composed of the ablest and best men in the Republic. It is, therefore, not difficult to account for the great talent generally displayed by the senate; nor for the remarkable steadiness and perseverance that distinguished its policy.

Notwithstanding the uncertainty that involves almost all the details relating to the constitution of the senate, it seems therefore to be clear that the members of this body, during the middle and latter periods of the Republic, were in substance chosen for life by the people, not as senators, but as high public officers, who became, by virtue of their places, senators for life upon quitting them. The practical results of such a system are probably not materially different from those of the method of election for short terms adopted in this country. We generally find that a member of congress or of the state legislatures, though his regular term of service may perhaps be only a year, is reelected as long as he will consent to serve, unless excluded from party motives, or for some other particular reason: and citizens, who have discharged with honor any public functions of considerable importance, are almost universally sent to the legislative bodies, if they are willing to go. We rather regret that an exception from this latter usage seems to be gradually establishing itself, in regard to the high office of president of the United States. We cannot think that it would have detracted at all from the real dignity of character of the three illustrious living statesmen, who have held this post, had they consented, upon retiring from it, to take a seat in the senate of the union; and

we are sure that their presence in that august assembly would have given additional gravity to its proceedings, and rendered a real service to the country. To return to the Roman senate, we agree with M. Villemain in thinking that its constitution, as far as we are acquainted with it, was in substance good. Had the whole legislative power been vested in this body, there would have been little to object to, in this part of the political institutions of the Eternal City. But there were great and deeply seated vices in other institutions still more important than the forms of legislation and administration, which contaminated from the first the good effect resulting from the excellence of these forms, and finally ruined the Republic.

In the last dissertation, M. Villemain examines the religious establishments, and the state of opinion upon this interesting subject. He considers the question, whether the principal citizens, who officiated as priests and augurs, really had any faith themselves in the gross superstitions which they employed to influence the people; and supposes with an appearance of probability, that in the early periods of the Republic, a great part of them really shared in this respect the credulity of the mass. In fact, the number of individuals of the educated class, who are able to emancipate themselves from the dominant prejudices of their age and nation is exceedingly small even in highly civilized communities, and of course still smaller in ruder ones: and the superstitions of the Romans, however gross they appear to us, were not more so than those of most other heathen countries. We have certainly individual instances of persons that appear to have treated the religious ceremonies with contempt; as was the case with a general bound upon a maritime expedition; who finding that the sacred chickens would not drink—which was thought a bad omen—threw them into the sea, and told them with an oath, that if they did not like fresh water, they should have salt. But an act of this kind is as likely to have been the effect of a momentary pettishness, like that which induces a savage to flog his god when his prayers are not granted, as of a rational contempt for superstition. There were however doubtless times and cases in which the instinctive good sense of some more generous minds rose above the influence of these prevailing opinions: as the poet of the Iliad represents his Trojan hero as declaring, that 'he cared not for the flight

of birds, whether they took their course to the right or to the left; and that the only omen he wanted, was the consciousness of serving his country.' It is also certain that the ceremonies were constantly employed at Rome for merely political objects. A consul or a tribune who found it convenient to adjourn a public meeting, always had a clap of thunder at command to assist him. But with all these exceptions and qualifications, there is every reason to suppose that the whole mass of the people, high and low, in the earlier periods of the Republic, believed in the truth of their religion as firmly and as faithfully as we do in that of ours. The progress of civilization and knowledge increased the number of sceptics: but the old religion had not entirely lost its hold upon enlightened minds, even after the establishment of christianity as the creed of the country. It appears quite certain from his writings, that the emperor Julian, with all his philosophy and wit, was a sincere and even enthusiastic pagan in the plain and usual sense of the term.

However gross and material may have been the religion of the Romans, they appear to have met with better success, and indeed to have exercised more wisdom, in determining the mode of its connexion with the state, than almost any country in which a religious establishment has ever existed. The union of church and state, as understood in most of the European countries provided with religious establishments, is in reality a legal separation or divorce; the functions belonging to the two departments, being committed to different, and in some degree, independent corporations, which act of necessity upon different and commonly hostile principles. A real union of church and state could only be effected by moulding the two systems into one; and not by forming a contract between them which is itself a tacit acknowledgment of their disunion. Religion and government, considered as establishments, are two forms, in which the same sovereign power, to wit, the nation, representing for this purpose the order of providence, declares the same laws under different sanctions. The *unity* and not the *union* of church and state is therefore the true theory of a religious establishment. All ministers of religion should on such a system be considered as political functionaries, and all political functionaries as ministers of religion: so that the same institution might at once

consecrate the state, and civilize the church. Such was in substance the state of things in the Roman Republic.

It is time however to bring this desultory article to a close. In dwelling at considerable length upon the recovered fragment before us, we have not only had it in view to make the reader acquainted with this particular work, but have gladly taken the occasion to offer our feeble tribute of applause to the writings and character of the author. We shall feel ourselves well rewarded for our labor, if any of our readers who may be led by this notice to peruse the Republic, should be induced by the profit and pleasure which this study will certainly afford them, to familiarize themselves with the splendid eloquence and sublime philosophy of the Father of his Country.

Art. IV.—*The General Laws of Massachusetts, from the adoption of the constitution to February* 1822, *with the Constitutions of the United States and of this Commonwealth, together with their respective amendments prefixed; revised and published by authority of the legislature, &c. by Asahel Stearns and Lemuel Shaw Esquires, commissioners. Theron Metcalf Esq. Editor.* 2 vols. 8vo. Boston, 1823.

We congratulate the magistracy and the legal profession in Massachusetts on the appearance of the present revised edition of our statutes. A considerable period has elapsed since the last revision of them, and the necessity of a new one had become very sensibly felt, in consequence of the unwieldly bulk of the acts at large, the difficulty of procuring perfect sets of all the statutes, the confusion arising from having acts public and private, repealed and unrepealed, mingled together without distinction, and many other defects in the mechanical arrangement and form of the old copies, which are remedied in the present edition. It is printed, so far as respects the typographical execution of it, in a style of neatness and liberality, very creditable to the publishers, and with a freedom from errors which can be justly appreciated only by those, who have had actual experience of the difficulties attending any attempt to render such works immaculate. The names of the gentlemen commissioned by the legislature to prepare the

edition for the press, and of the editor whose aid they enjoyed, would be of themselves an adequate pledge to the public that no pains would be spared, nor any qualifications wanting, to ensure for this edition the greatest completeness both in plan and execution. What the commissioners have done, cannot be stated better than in the following extracts from their prefatory notice.

'The resolve of the legislature, under which this edition of the statutes is published, has been the guide of the commissioners in preparing it for the press. It has been their design to insert all public acts of a general nature and applicable to the commonwealth at large, except such as have ceased to affect existing rights, or would not illustrate the history of the law. They have also inserted a few special and private acts, which are of general interest, either from their connexion with public acts, or from the importance of the subjects to which they relate.

'The acts of each legislature have been divided into chapters, and numbered in a regular series from the beginning to the end of each political year. This has been done in chronological order, except in a few instances of acts wholly omitted in former editions, or inserted in the appendix to the second volume of the edition of 1807. These have been placed at the end of the year in which they were enacted, so as not to derange the numbers under which the statutes have heretofore been cited.

'The repealed acts which are retained in this edition, and those parts of acts which are repealed or have otherwise become inoperative, are printed in small type, and the repealing acts indicated by marginal references. At the end of the public acts and of the title of the private acts, reference is made to additional acts on the same subject; and acts enlarging, restraining, or modifying the text, have been referred to in the margin. The amendments to the constitution of the United States* and of this commonwealth have been indicated in a similar manner.

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'In addition to the references which were prescribed by the resolve of the legislature, the commissioners have thought proper to refer to the Colony and Province laws on the subjects of the several statutes, that a view of the whole history of our legislation might be readily obtained by those who desire it.

'The title and the text of every act in this edition have been compared with the original rolls in the secretary's office, and all the errors of former editions corrected.

* The thirteenth amendment to the constitution of the U. S. is inadvertently inserted with the others, as is also the case in the edition of the laws of the U. S. published by Bioren and Duane, in 1815. It was not adopted by a sufficient number of the states to become a part of the constitution.

'An analytical index of the contents of this edition has been prepared with considerable care and attention, and added to the second volume.'

We feel confident that the public expectations will not be disappointed in this edition, much as the community had a right to anticipate from it, when they knew its publication was entrusted by the legislature to persons so fully competent for the task as professor Stearns and Mr Shaw. So far as we can judge from the cursory examination which we have been able to bestow upon the two volumes, the execution of them is such as to do justice, in every respect, to the confidence reposed in those gentlemen by the legislature.

The republication of the statutes affords us an occasion, which we have some time desired, of inquiring into the origin, growth, sources, and effects of the most important peculiarities in the laws of Massachusetts, and of the several New England states. Through all these states there is a manifest similarity in their laws, as there is indeed in most of their institutions, in their customs, manners, and in the general tone and character of society and of the people, with the circumstances and causes of which likeness our readers are too familiar to need to be reminded of them in this connexion. As Massachusetts, beside having been the oldest colony, and beside having always retained the precedence in power and population which her start of the rest enabled her to acquire, did once embrace within her territorial limits nearly the whole extent of New England, it follows that the laws of Massachusetts present a fairer example, than can be found in either of her sister New England states, of their departures from the principles and elements of the contemporary laws of England. An examination, therefore, of the rise of these differences in Massachusetts will serve as an illustration, at least, if not as a complete development, of the nature of similar differences throughout this section of the Union. The original settlers of Connecticut, in their individual spirit, and in their public counsels, are almost identified with those of Plymouth and Massachusetts; these last, with Vermont, New Hampshire, and Maine, have in past times constituted the same jurisdiction; and Rhode Island alone, as having been established in the principles of genuine religious freedom, bears a more peculiar stamp on her civil institutions, but not so essentially

peculiar as to prevent her being comprehended in the same class with the other eastern states.

We shall not institute this comparison boastingly, however justly we may pride ourselves upon the improvements, which we have made in this country, upon the common law properly so called,—with whatever emotions of honest exultation we might reasonably point to these improvements. For we apprehend that oftentimes, when professional men among us are bestowing exalted praise upon the common law, they lose sight of the important fact that the common law in England is radically different from the system which bears the same name in America. The common law, properly speaking, is that in which Hale and Holt and Mansfield and Ellenborough adjudicated,—which Coke and Blackstone commented upon,—which upholds England's government by king, lords, and commons,—which marks out the jurisdiction of her courts of chancery, king's bench, common pleas, and exchequer,—which fixes the rules for the descent of property,—which engendered and perpetuates the *rotten borough* principles of representation,—which did authorize the tenure of knight's service with the rest of the antiquated burdens of the feudal system:—for all these things, with a thousand others of the same stamp, are among the peculiar discriminating qualities of the common law, inherent in its very essence, but irreconcileably at war with all our dearest institutions. It is the common law of Virginia, of Massachusetts, of New York, or of Pennsylvania, which Americans must intend when they eulogize the common law; and we unite heart and hand with them in their warmest expressions of veneration for this law, since light does not differ more from darkness, than this does from the common law as flourishing on its native English soil. But without entering, on the present occasion, more particularly into the comparison between the laws and institutions of our country and those of England, in a general view, we proceed to the elucidation of the main inquiry, whence did these well known differences originate? And in the prosecution of this inquiry we confine our remarks to Massachusetts, as well for the reasons before mentioned, and for the preservation of some little unity of design in the present article, as because the subject will be more thoroughly understood with these restrictions, than if we spread out our investigation through the laws of other states.

The first cause, which presents itself, of many of the differences in question, is the charter of incorporation originally granted the colony, and afterwards displaced for the province charter. By virtue of these instruments, and under the express provision of one of them, our representative government was originally established and subsequently confirmed, together with the authority of a governor and of a general court; and the same charters relieved us of the whole system of the feudal tenures, with all their incidents, qualities, principles, and consequences. There is yet another admirable feature in the political institutions of America, of which our charter and the charters of the sister colonies were the original, namely, the prevalence of written constitutions. We stop to mention this fact more particularly, because the idea of these constitutions, which are among the peculiar boasts of our country, and which the French, in imitation of us, and other nations of continental Europe in emulation of France, have been struggling so pertinaciously to obtain and secure, was undoubtedly suggested to our ancestors in consequence of their habitual reference to the colonial and provincial charters for the tenure by which their political rights and immunities were holden. Our constitutions, indeed, differ essentially from the charters in nature, the latter being mere grants of privileges from the crown, whilst the former are a voluntary limitation of their own privileges on the part of persons who recognize no political superior; but the constitutions closely resemble their prototypes in this, that the charters were then, as constitutions are now, a recorded system of fundamental law for the guidance both of the people themselves and of the delegated holders of their authority. And the fact that such was the origin of our constitutions will serve to explain the facility with which they were introduced, the ready acquiescence of the country in their establishment, and the immediate efficaciousness, which they enjoyed when put in operation. For they were not, either in principle or in form, a radical innovation upon the social order, calculated to impress the people unfavorably by their strangeness, or to meet with obstacles to success on account of the novelty of their design. And happy would it be for those nations, which are following our example in this respect, if, instead of having to force their constitutions upon a portion of the body politic that opposes them as adverse to

their prejudices, principles, power, and interests, they had been prepared, like ourselves, to greet constitutions as an old and tried friend reappearing under more imposing auspices.

The next source of difference, to be adverted to, is the local situation of our ancestors, in respect of their condition as an infant colony, separated at a great distance from the parent country, in a desert land, where it would have been absurd to think of carrying into effect all the complicated laws of a powerful, populous, and refined empire. The colonists uniformly considered themselves justified in leaving behind them so much of the laws relative to the constitution of courts of justice, the punishment of offences, the support of established clergy, the artificial refinements and distinctions in the nature of property, and the like, as were wholly inapplicable to their altered circumstances; and the exercise of such a right must obviously have operated as a kind of discretionary power in the rejection of old and the adoption of new rules of conduct, wherever the colonists were of opinion that such a change was expedient or desireable. Under the first charter, this discretion was pretty liberally construed, while the colonists acted independently of the authority of the metropolis; but when the growing boldness of the colonists had attracted the attention of the British ministry to the increased importance of the colony, and the provincial government was established in Massachusetts, the people were made more sensible, as we shall show hereafter, of their dependance on Great Britain. At the time when Massachusetts was colonized, the law with regard to this point was not so well understood in England as it was at a later period. The celebrated case of the *Postnati*, indeed, which decided that, a person born in Scotland after the descent of the crown of England to king James, was entitled to the privileges of a natural born subject in both kingdoms, occured at the period under consideration, and served to put to rest many a *quæstio vexata* concerning the relative legal conditions of inhabitants of different countries united under the same general allegiance. But the questions agitated in this case referred only to the situation of the people of a country conquered by the king of England, or belonging to him by cession, descent, purchase, or possession, previous to his obtaining the crown; and a multitude of illustrious examples, applicable to such a case,

grew out of the numerous fiefs, which the kings of England held at various times in France, and out of the conquest of Wales and Scotland. But the condition of English-born subjects, who emigrated to an uninhabited country, or to a country in the possession of savages, and formed a settlement there, was a case too novel to have yet had its legal operation well ascertained. So late as the reign of William and Mary it was holden that if an inhabited country was discovered and settled by English subjects, all laws in force in England were in force there; and that in case of a country conquered from infidels, their laws continued in force until declared void by the conqueror, unless they were inconsistent with our religion, or enacted any thing that was *malum in se*, or were silent, when the country was to be governed according to the rules of natural equity. These principles were affirmed by the lords of the privy council in 1722, excepting that they considered the laws of the victor as immediately taking effect, wherever those of the vanquished were deficient or abolished, without making any reservation as to the applicability of the laws of the conqueror to the circumstances of the conquered country. But all the cases unite in maintaining, that where an infidel country had been subdued by Englishmen, in which predicament the colonies were regarded, it did not become *ipso facto* subject to the laws of England. Hence it was laid down by sir William Blackstone, that the common law of England, as such, had no allowance or authority in the American plantations belonging to Great Britain. This being the concurrent decision of all the English law-books, it is evident that, although the charter given the colonists required their laws to be consistent with the English, yet, as the charter provided no test of that consistency, the determination of it was necessarily left to the colonists.* And out of these circumstances arose the *common law* of Massachusetts, as explained by chief justice Parsons.†

'Our ancestors,' are his words, 'when they came into this new world, claimed the common law as their birth-right, and brought it with them, except such parts as were judged inapplicable to their new state and condition. The common law, thus

* See Coke's Rep. pt. viii; Salkeld ii. 411 and 666; Mod. Rep. iv. 215; P. Williams, ii. 75; Blackstone's Com. i. 107.

† Massachusetts Reports, ii. 534. Com. *vs.* Knowlton.

claimed, was the common law of their native country, as it was amended or altered by English statutes in force at the time of their emigration. Those statutes were never re-enacted in this country, but were considered as incorporated into the common law. Some few other English statutes, passed since the emigration, were adopted by our courts, and now have the authority of law derived from long practice. To these may be added some ancient usages, originating probably from laws passed by the legislature of the colony of Massachusetts Bay, which were annulled by the repeal of the first charter, and from the former practice of the colonial courts, accommodated to the habits and manners of the people. So much therefore of the common law of England as our ancestors brought with them, and of the statutes then in force amending or altering it; such of the more recent statutes as have been since adopted in practice; and the ancient usages aforesaid, may be considered as forming the body of the common law of Massachusetts.'

In determining what portions of the common law to reject, and what regulations to substitute in their stead, our progenitors were guided partly by the external circumstances, which we have just mentioned, but still more by their own character, by the fact that they were exiles and sufferers for conscience's sake, by the austerity of their moral principles, by the unconquerable spirit of independence, which armed them to endure all afflictions and brave all dangers, with unshaken resolution, in vindication of their inalienable right to worship God according to the dictates of their own consciences. They did not fly to *this outside of the world*, as they forcibly termed it, impelled by mere sordid avarice to dare the perils of untried seas and of untrodden wildernesses. Had they been needy adventurers, actuated only by the love of gain, there might have been copious chapters in their laws for parcelling out the subject territory and its population into *repartimientos*, but there would have been few clauses open to censure for any severity of animadversion against unsound morals or questionable faith. They did not flatter themselves, in their first feeble attempts at a settlement, that they, poor wandering fugitive outcasts, were establishing the foundations of an empire, which, in the swift development of its energies, should soon unite the freshness and elasticity of youthful strength with the refined skill and persevering vigor of mature age. No ambitious projects of conquest, in short, no deep-laid schemes

of commercial speculation, none of the ordinary causes of an overflowing population, or of poverty and infamy at home, conduced to the emigration of our forefathers, but the high and holy motive of devotion to what they esteemed the cause of pure and undefiled religion. Such being the influences, under which they acted, it is not extraordinary that a deep and pervading sentiment of religious enthusiasm controlled the measures of their government; nor is it extraordinary, considering the long series of persecution, by which their feelings had been harrassed and irritated into a state of unnatural violence, that some of their laws should breathe a more intolerant spirit, than a liberal policy could justify in less aggravating circumstances.

The operation of the various causes, to which we have referred, will be most readily discerned, and their influence on our system of jurisprudence best appreciated, by considering what were in substance the colonial laws; an inquiry, which we can the more successfully pursue, inasmuch as these laws formed a code that was complete in itself, unique in its spirit, peculiar in its elements, and sufficiently remarkable to merit the attention of scientific jurists. An examination of it will afford ample illustration of the preceding remarks, at the same time that it will disclose the origin of many of the most important singularities in the existing laws of Massachusetts as compared with those of England.

By the colony charter, the first settlers of Massachusetts were constituted a corporation, with the usual powers of such a body, and with *no others* :—that is, to sue and to be sued as natural persons may; to purchase and hold lands to them and their successors; to have a common seal; and to enact by-laws, which should be binding as to themselves, unless contrary to the laws of the land. They had high privileges, it is true, for private persons;—they enjoyed a temporary exemption from internal taxes and from the customs, and they and their descendants were entitled to all the rights of Englishmen; but they possessed few of the powers essential to the being of an independent state. They had no authority to inflict capital punishments, nor to erect courts for the probate of wills or courts with admiralty jurisdiction, nor to create a house of representatives, nor to levy taxes on the inhabitants, nor to incorporate towns, colleges, parishes, or other like communities.

Now these powers are evidently inseparable from the very nature of political authority; and all of them, from the mere necessity of the thing, were unhesitatingly assumed immediately after the emigration of the colonists, and continually exercised by them until the resumption of the first charter by king Charles II. The utter inadequacy of that charter to meet the exigencies of a provincial government would be sufficient in itself, if there were no other facts of the same import, to show that neither the crown-lawyers in framing, nor the grantees in accepting, such a charter, had it in contemplation to constitute a system of government for an extensive colony in parts beyond the sea. They simply entertained the idea, as we took occasion to observe in a former number,* of forming a trading and planting corporation. The very act of transporting the charter across the ocean was, in the opinion of Dr Robertson, if not a violation of the letter of the instrument, yet certainly incompatible with its spirit. The whole administration of provincial government itself was, therefore, in its very outset, as well as in its after course, an act of usurpation in respect of the prerogatives of the crown, and an evasion,—justifiable and necessary, we admit, but still an evasion,—of the laws of the metropolis. Bearing this circumstance in mind, we shall be prepared for what might otherwise occasion surprise, when we come to consider the multiplied and manifold violations of their charter in lesser particulars, which the colonists boldly ventured upon, in obedience to that unconquerable spirit of independence, which never ceased for a moment to be the darling object of their devotion, and the controlling principle of their lives.

The charter of Massachusetts vested the supreme authority in a governor, deputy-governor, and eighteen assistants,—all to be chosen by and from the freemen,—and in the freemen of the corporation themselves, who were styled the general court of the corporation;—a name, which our legislature has retained unaltered through all the changes which our government has since undergone. At the first general court, which was was assembled (October, A. D. 1630) the freemen voted, in violation of their charter, to delegate the legislative and executive powers to the court of assistants; but a few years

* N. A. Review, xv. p. 25.

afterwards (1634), when the freemen had become numerous in consequence of the influx of emigrants, they accomplished a complete revolution in the government by choosing deputies to represent them in the general court, and fixed the frame of government, as it continued, with slight variations, until the forfeiture of the colonial charter. Here, then, we find the germ of that system of elective representation, which, in its subsequent growth, has proved to be another of the most valuable of our political franchises. But the great moving principle in the minds of the colonists was most strikingly displayed by the regulation, adopted at a very early period, that they, and they only, who were members and communicants of some church in the colony, should be freemen of the corporation. This extraordinary law, which placed all temporal power ultimately in the hands of the clergy, and excluded a large portion of the inhabitants of the colony from any participation in the privileges of citizenship,* occasioned great complaints in England; on which account it was nominally repealed on the restoration of the Stuarts. The repeal, however, was artfully clogged with so many conditions as to render it wholly ineffectual, and such continued to be the sole qualification of a freeman so long as the government subsisted. The freemen assembled yearly for the choice of magistrates and deputies out of their own body, whom the law required also to be of orthodox principles in religion. The assistants were generally eight or ten in number, and the deputies two for each town, or one for every twenty corporators. The governor and assistants in one room, and the deputies in another, each body having a negative on the other's votes, constituted the legislative assembly. The governor had the power of calling the

* This appears to have been a distinction, however, that was not universally courted; for we find a law made in 1647, which recites that, 'Whereas many members of churches, to exempt themselves from public service, will not come to be made freemen, it is ordered that no members of churches within this jurisdiction shall be exempt from any public service they shall be chosen to by the inhabitants of the several towns,' &c. In the appendix to Hutchinson's History (v. i. n. 2 and 3) are two papers in which the reasons of this rule are discussed. Lords Say and Broke objected to it, that it would 'bring in papal excommunication,' that it would 'draw all things under the determination of the church,' that the state would lose the service of many men, who, though not religious, had 'eminent gifts of wisdom, courage,' &c. These objections were considered by the assistants and Mr Cotton. See on the subject Hutchinson v. i. pp. 222, 231, 233, 236, and the ap. ut supra. See also Colony Laws, c. 49.

general court together, but it was adjourned, prorogued, and dissolved by its own authority. The general court, and that body alone had power to enact laws, levy taxes, and grant proprieties in land; to coin money; to regulate the press; to erect corporations; to pardon sentenced convicts; and in general to exercise all other transcendent jurisdiction. It was also a court of appeals and review in the last resort. The governor acted as one of the assistants, excepting that, if the votes were equally divided, he was counted twice to produce a decision. The court of assistants, consisting of the governor, deputy-governor and assistants, composed the executive authority; they were a standing council of the colony in the vacations of the general court, with power to levy soldiers and otherwise provide for emergencies; and they were a judicial court for hearing civil causes of appeal and of divorce, and all criminal causes extending to life, member, or banishment.

Such as we have thus described it, was the simple form of the colonial government. Although it was not created at once and many portions of it were added from time to time, as the public need suggested the expediency of improvement in the original plan, yet in substance, in spirit, in general principles at least, if not in all its minuter details, it may be considered as the system which prevailed from the time when the colonists emigrated to this country, until their charter was taken away and the corporation dissolved.

Before proceeding to give an account of the laws, by which the rights of individuals were regulated under this system, we ought to state some facts connected with the compilation of those laws. The colonists, as we observed before, upon their arrival in America, very unceremoniously freed themselves of the burden of the English laws, notwithstanding the clause in their charter, which required that the laws of the colony should not be 'repugnant to the laws and statutes of the realm of England.' During the first three or four years after the arrival of the emigrants, justice was administered according to the sentiments of natural equity entertained by the judges, who had recourse to no authority but the Mosaic law, to which they conformed in all cases where they could wrest it into any real or imaginary application to the circumstances of the colony. Hutchinson records some very characteristic instances of the rude and simple justice of our forefathers in the

period of our national infancy.* But as the settlements became more extensive, the necessity of a firm and stable system of laws urged itself more forcibly upon the colonists, and committees, consisting of the principal persons of the clergy and laity were appointed from year to year to frame a suitable code.† While this was in preparation, such laws were occasionally enacted as could least be dispensed with, and in 1648 the whole compilation was completed and promulgated under the direction of the general court. In presenting our readers with a review of the contents of the code, we shall, for the sake of perspicuity, arrange our comments in that order, which, notwithstanding its want of logical exactness, has acquired a prescriptive authority in jurisprudence, beginning with the laws relating to the rights of persons in their respective relations in society, then proceeding to the laws regulating the tenure and transfer of property, next considering the course of judicial proceedings, and concluding with the subject of crimes and their punishment.

I. We have already mentioned the means of acquiring the rights of a corporator; and although personal security was extended to all residents within the jurisdiction of the colony, yet church-members alone were freemen; and they so united themselves, by oath, to each other and the state, that the consent of the whole was necessary to effect a separation. Every person was guarantied the unimpeached enjoyment of all his legal liberties, privileges, and immunities; nor could he be restrained in person or property, unless 'by virtue of some express law of the country, warranting the same,' says the act, 'or in case of the defect of the law, in any particular case, by the word of God.' The strict puritanical character of the laws, however, confined the rights of the colonists within a narrow compass, as we shall see hereafter; and no

* 'Josias Plaistowe, for stealing four baskets of corn from the Indians, is ordered to return them eight baskets, to be fined five pounds, and hereafter to be called by the name of Josias and not Mr, as he used formerly to be.'—Hutchinson, ch. v.—'Robert Shorthose, for swearing by the blood of God, was sentenced to have his tongue put in a cleft stick and to stand so for the space of half an hour.' Ibid.

† The model or first draft, from which this code was prepared, is preserved in Hutchinson's Collect. p. 161, and in Mass. Histor. Collect. v. p. 173. It was written by the famous Cotton, and is a signal instance of the extravagant excess to which superstition was carried in that age. Mr Cotton intended that the government should be a pure theocracy.

person could leave the limits of the patent without permission of a magistrate. Slavery also was recognized by law, and that not only in the persons of captives taken in war, or sold in the colony, but in the odious form of bond-service for the payment of debts; for an insolvent debtor might be sold into servitude at the requisition of his creditor. There were no established distinctions of rank among the freemen other than such as the exercise of elective magistracies created; but these were scrupulously observed, in obedience to the austere spirit of a religious commonwealth.

The congregational was the established form of church government, in nearly its present constitution; each church having intrinsic powers for the choice of officers, and other interior regulations; subject, however, to the control and exercise of the secular authority; for if any church selected preachers offensive to other churches or to the general court, or neglected its minister's maintenance, in both these cases the general court or assistants interposed to enforce the laws. Synods were occasionally assembled, in which the magistrates assisted 'not only to hear, but to deliberate and determine;' but these synods could 'exercise,' says Burke, 'no church censures by way of discipline, nor any act of church authority or jurisdiction.'* Still the clergy possessed a less obtrusive, though equally effectual power in civil affairs by means of the deference and veneration of the people.

The system of organizing the militia, which now exists in Massachusetts, likewise had its origin under the colony government; for the colonists living at this time in the midst of warlike tribes of savages, who were kept in a state of constant irritation and hostility by the intrigues of the French in Canada, the most severe discipline was absolutely essential to the very being of the colony. At first, every male person, with some few exceptions, was required to appear in arms once in each month, which was afterwards reduced to six days in the year. Every inhabitant was obliged to furnish himself with arms and ammunition, except magistrates, elders, and the officers and students of Harvard College. The officers of the companies were chosen by the companies respectively; and the superior officers by the freemen and householders within the districts which their commands embraced.

* European Settlements in America, v. ii. p. 148.

Beside the civil division of the colony into counties, in imitation of the mother-country, the inhabited territory was subdivided into towns with the unostentatious municipal magistracy of a small number of *select-men* annually chosen out of the body of the inhabitants, in that manner which still remains among the peculiar institutions of New England. As a portion of the country became settled, the inhabitants, within certain prescribed boundaries, were constituted a corporation with perpetual succession, and with the usual corporate powers requisite for managing the affairs of similar communities. While these miniature states, whose concerns were regulated in meetings of the inhabitants, and which were of course pure democracies in constitution, served, on the one hand, to nourish and foster in the breasts of the colonists a spirit of republican independence, on the other hand, they relieved the general court from the task of assessing and diffusing the most burdensome of the public charges, namely, those for the support of the poor, of schools, and of the highways.

The colonists regarded matrimony as a civil contract exclusively; and in conformity with this idea, marriages were universally solemnized by the magistrates. Hutchinson conjectures that this remarkable departure from the principles of the laws of England was suggested by the Scottish law, which gives the same authority in this respect to the magistrates,* and from which our ancestors copied many of the peculiarities in their political institutions. All marriages, as well as births and deaths, were recorded; and no parties could be married, without the consent of their parents, nor before their intention had been duly published by being posted up in certain public places for fourteen days, or declared at three several church-meetings. Adultery, cruel usage on the part of the husband, and desertion for a year or two were considered adequate causes of divorce; but they abolished the distinction of divorces made by the canon law, all sentences of divorce dissolving the bonds of matrimony.

The obedience of children to their parents was severely enforced, for a stubborn and rebellious child was punishable with death. All children were taught to read, catechised, and otherwise instructed in their families, the selectmen being

* Erskine's Scottish Institute, p. 64. Hutchinson, c. 5.

bound to execute the laws to that effect. But above all, we should notice the circumspection and liberality of the colonists as displayed in their laws for the support of public schools, one of which every town containing fifty householders was bound to maintain. Thus early were laid the foundations of that system of primary education, which, by disseminating a spirit of industry and intelligence through all classes of society, has contributed, perhaps more than any other single cause, to confirm and perpetuate the peculiar character of the inhabitants of New England.

II. The patent of the colonists prescribed that their lands should be holden of the king and his successors as of their 'manor of East Greenwich in Kent in free and common socage, and not in capite nor by knight's service;' which clause in the charter was undoubtedly intended to refer simply to the *tenure* of the lands *as respected the king*, without drawing along with it all the properties of gavelkind-lands in Kent. But happily it was interpreted in a larger sense than the charter strictly warranted; for our ancestors had a great talent for detecting those constructive powers, which our Virginian brethren so zealously deny in the National Constitution; and to this we are to attribute the liberation of the colony from the burden of the feudal tenures. Hence, agreeably to the custom of gavelkind, and in contradiction to the common law, they admitted no forfeiture of estates for felony; nay, they went farther than gavelkind itself; for they suffered traitors, according to Hutchinson, no less than ordinary felons, to devise their lands after sentence; and if a convict died intestate, distribution was made as in other cases.* The rules of descent were very peculiar, entailed estates following the common law, but estates in fee-simple descending to all the children alike, except that the eldest son had a double portion in conformity with the institutions of Moses.†

Two very important variations from the principles of con-

* The maxim of the custom of gavelkind is, 'the father to the bough and the son to the plough.' St Germ. D. and S. c. 10. But this did not apply to treason, which always wrought a forfeiture. Tomlin's Jacobs, v. iii. p. 111 and 178. See also Robinson's Common Law of Kent, p. 227.

† Col. Laws, c. 104; Robinson's Gavelkind, p. 9; Hale's His. Com. Law, c. 11; Deuteronomy, xxi. 17.

veyancing at the common law, which still subsist among us, were introduced at this time, namely, the requisition of an acknowledgment and registry of deeds, and the permission given to married women to aliene lands. In 1641 it was ordained that no grants, sales or mortgages of land, where the grantor continued in possession, should be in force, except against the grantor and his heirs, unless the same was acknowledged before some magistrate and recorded; and in 1651 another ordinance provided that no alienation of lands should be valid, unless by deed executed with livery and siesin, without acknowledgment and registry of the deed. Previously to these acts, the delivery of a deed was sufficient in the colony to pass real estate, as the English statute of enrolments was held not to extend to this country.*

With respect to the power of wives to join with their husbands in conveyances, there was a special ordinance authorizing a feme covert to bar herself of her dower; but the ordinance did not extend to enabling her to aliene estates held by her in her own right. The usage, however, prevailed in the colony, difficult, as our courts have since declared it is, to ascertain the origin of the usage, or to place its legality on any other ground than that of the common law of New England.†

III. The administration of justice in the colony was conducted with extreme simplicity, and with a disregard of forms, which could not have been borne in a community differently constituted. The judicial power, both in criminal and civil matters, was originally exercised by the court of assistants; but afterwards, when the colony was divided into counties, county-courts were holden in each county, by magistrates or other persons, nominated by the freemen and approved by the general court, to the number of five, any three of whom, a magistrate being one, were a court with power to hear and determine all civil causes, and all criminal causes not extending to life, member, or banishment. High criminal causes, as we have seen, were cognizable only by the magistrates, to whom, also, an appeal lay in civil causes, and from the magistrates to the general court. There were no justices of the peace according to the usual signification of the terms, but the

* Mass. Rep. iv. 544; Ibid. v. 473; Ibid. vi. 26; Col. Laws, c. 28; Hutchinson's His. i. 455. † Mass. Rep. vii. 2.

assistants individually exercised most of the functions of justices of the peace. These courts had cognizance of all causes of whatsoever name or nature, whether properly of common law, civil, equitable, or ecclesiastical jurisdiction; and however inadequate such tribunals might be to execute the laws in a less primitive community, they sufficed for the wants of our simple forefathers.*

The judicial proceedings were as summary as could consist with the preservation of any kind of method in the course of law. The parties had a right to take their election of having a trial either by the bench or by a jury. Jurors were chosen by the votes of the freemen. They could ask advice of any person present, if they were not decided in their own minds; and so far were they from being confined to the question at issue in returning a verdict, that, in criminal cases, they sometimes found as their verdict that there was strong reason for suspicion, but not enough for conviction, and the court modified their sentence according to such a verdict. No special pleadings or demurrers were admitted; and no summons, plea, or other process could be abated for any circumstantial errors, provided the cause was rightly understood.

The process in actions was either by summons or capias, at the plaintiff's election, both conceived in the most concise and laconic terms imaginable; and what is worthy of notice, as indicative of the republican temper of the times, no writs, indictments, or other legal proceedings ran in the king's name, or contained the slightest allusion to the authority of the sovereign. The plaintiff might either hold the defendant to bail, or attach his property; and the attachment held good until thirty days after rendition of judgment. If the judgment-creditor could not find goods to satisfy his execution, he might, as we stated in another place, levy it on the body of the debtor, who was then compelled to discharge it by bond-

* The remarks of judge White, in his unpretending but valuable work on the Probate Law of Massachusetts, are applicable to this point. 'Though familiar,' he says, 'with the distinction between the civil and ecclesiastical jurisdiction in England, they were never inclined to introduce it here; nor would the constitution of their churches have admitted it. The leaders among them were wise and practical men, and well understood how to adapt their laws and institutions to the condition of a new and growing settlement, and to vary and extend them, as their experience dictated, without transplanting more from the parent country than was applicable and useful.' p. 9.

service; so harsh and severe have always been the laws enacted for the collection of debts, even among the most civilized people, and at the most refined ages, of the world.

One thing else under this head may be mentioned, as a very remarkable practice introduced at this time, and handed down to us from our ancestors, although without having been either established or perpetuated by any statutory provision. We allude to the form of swearing by holding up the right hand, instead of kissing the book, or laying the hand upon it, which the scrupulous colonists, in common with the Scottish covenanters, regarded as an idolatrous and superstitious ceremony. No particular form of administering judicial oaths was ever required in England any more than in Massachusetts; but the usage of touching or kissing the evangelists prevailed so universally in the former country, that the books refer to two cases only, one in 1657 and the second in 1745, in which witnesses were permitted to hold up the hand, and which were recorded on account of their singularity. The latter form, however, has such decided advantages over the former, that we have great cause to rejoice in the exchange, as giving us a ceremony which is more simple than the English, more impressive, in far better taste, and much more solemn, in the opinion of so competent a judge as lord Mansfield.*

IV. The criminal laws of the colony remain to be considered; and these we may pass lightly over, since, while they constitute one of the darkest features in the civil polity of our sires, there now continue but few and faint traces of them in the existing codes of the New England states. Regardless of the principle of the common law to which they were pledged to adhere, blind to the situation and emergencies of the country and of the times, alike unmindful of the dictates of reason and the voice of experience, the colonists enacted a system of vindictive and sanguinary penal jurisprudence, which finds a parallel in no code of modern days, and in but one of all the numberless diversified codes of antiquity. Beside most of the crimes

* As to the introduction of the usage in the Colony, see Hutchinson, ch. 5. The cases referred to in the text are that of Dr Owen in Siderfin's Reports, v. ii. p. 6, and of a Covenanter mentioned by lord Mansfield in Cowper's Reports, p. 390. See also Willes' Reports, p. 553; Paley's Philosophy, p. 145; and Tombes on Oaths, l. v. s. 1, for more information on the same subject.

capitally punished by the common law, our forefathers added, to the gloomy catalogue, idolatry, witchcraft, blasphemy, adultery, man-stealing, cursing, smiting or rebelling against a parent, and heresy,—offences, some of which more enlightened legislators have since expunged from the statute book, while to the rest they have annexed punishments more appropriate to their rank in the scale of criminal enormity. The singular inconsistency of these laws, which, under a regal government, altogether omitted the crime of high treason, and punished heresy with death in a community established for the sole purpose of vindicating the rights of conscience, may be accounted for by the circumstance that the colonists conceived themselves bound to revive and follow implicitly all the peculiarities of the Mosaic institutions. With a fond extravagance in simplicity, which may now excite our amazement, they regarded the laws of Moses, not as the temporary polity of a corner of Asia, which divine revelation had abolished sixteen centuries before, but as the eternal, immutable, and indispensable decrees of God, irrevocably binding upon all succeeding ages and in every clime of the habitable globe.*

The colony-laws specified a great number of lesser offences, which it is unnecessary for us to enumerate, observing only that many of them strikingly indicated that over-zealous desire to exact the observance of minute and trivial things, which has exposed the puritans to so much ridicule from the less scrupulous among their contemporaries and successors. In the kinds of their pnnishments, too, they displayed little of the spirit of improvement so characteristic of other portions of their ordinances. They transferred to their adopted country the stocks, the pillory, and the whipping-post of their native land; nay, one of their acts authorized the application of torture to discover the accomplices of a convict, provided, subjoined the well-meaning legislators, that the torture be not '*barbarous and inhuman;*' so little progress had at that time been made in the difficult and embarrassing science of penal jurisdiction.

* Col. Laws, c. 18; Hutchinson's His. i. 440. The texts of the Pentateuch are printed against each law in the penal title. Col. Laws, *ut supra*, and Adv. to edit. 1814; Mather's Magnalia, v. 20; Minot's Continuation, i. 24. The original draft reported by Mr Cotton was much more merciless than the above. See Mass. His Col. 1798, p. 182.

We said that the crime of heresy was punished, in the colony, with death. The remark needs to be qualified and explained. The regulations that church-members alone should be freemen, and that all high offices of trust or honor should be reserved for orthodox congregationalists, would appear, at the present day, to be a sufficiently harsh denunciation of the doubtful crime of heresy. But it seemed far otherwise to our progenitors; for, by the acts against heresy, the opposing of certain dogmas, therein mentioned, and the denial of any of the canonical books of the old or new testament, were punished with fine, whipping, and banishment. In addition to this, all catholic priests and all quakers were banished from the jurisdiction, punishable with death if they returned; and the least intercourse with quakers was forbidden under the heaviest penalties. The injudicious execution of these laws in several instances, while it exposed the conduct of the colonists to such severe examination in England as resulted in the forfeiture of their chartered privileges, and in the formation of a government less independent of the crown, afforded a striking example of the doctrine since laid down by Montesquieu; 'que toute religion réprimée devient elle-même réprimante.' The settlers of Massachusetts did not fly to the deserts of the new world, like Penn and his followers, to found there a commonwealth on the broad basis of universal toleration; but it was to withdraw themselves out of the reach of an oppressive hierarchy, and to admit none to a fellowship of interests with them, who were not impelled by their own stern and inflexible principles; and to such alone did they proffer an asylum from persecution in New England.

If our readers have followed us thus far, they will now be prepared to apply the remarks, which we made in a former part of this article, as to the source of our peculiar laws. And when they advert to the defects in the system of jurisprudence just described, defects, too, so numerous and so radical, we think they will agree with us in the opinion that the social order could not have been preserved entire by means of the colony-laws, if their operation had not been aided by the exalted sense of duty, the unwavering obedience to the dictates of conscience, which elevated and directed the actions of our ancestors.

All these laws were virtually abrogated by the seizure of the colony-franchises into the hands of the king in 1688, and the grant of a new charter, vesting the appointment of a governor in the king, and making it necessary that all acts of the general court should receive the king's approbation, before they enjoyed the force of statutes. Under this charter the municipal laws of the colony were gradually enlarged, the outlines already traced were filled out into the proper consistency and finished form requisite for the occasions of a populous state, many of the harder features of the original were softened down beneath the influences of a more tolerant spirit, and the whole was assimilated, in substance, to what we now find prevailing under the constitution of Massachusetts.

To attempt the task of continuing the history of our law to the present moment would be greatly exceeding the reasonable limits of a review. It is not our aim to give an abridgment of the statute-book or a digest of the reports. But while upon this subject of the peculiarity of our laws, we would not lose the opportunity of referring, before we conclude, to a work, which, as we conceive, will go far towards creating a new era in our judicial history. We allude to the Digest of American Laws proposed for publication by Mr Dane of Beverly. The name of this gentleman, closely associated, as it is, with the political and constitutional history of our country, has no less distinguished claims to eminence in connexion with our municipal law. In saying this, we do not confine ourselves to the considerations, that his collection of American precedents has been a standard law-classic in this country for twenty years, and that he has devoted the leisure of twice that period to the preparation of his Digest. Mr Dane's title to the respect of the profession rests on still higher grounds. He is one of the few surviving luminaries of that constellation of legal sages, who illustrated the bar and bench of Massachusetts in the periods immediately succeeding the revolution. Who, then, so able to combine and digest the elements of our law as he, beneath whose eye it has grown up into the complete proportions of its present maturity? Who so capable of penetrating and developing its principles, as this venerable monument of those days when there were giants in the land? Who so familiar with the whole theory

and practice of it, as one, who was not only the coadjutor of the Reads, the Trowbridges, the Cushings, the Danas, the Parsonses, and the Sewalls of the generations that are gone by, but the contemporary likewise of those, who now inherit their fame and rank in the courts of Massachusetts and the union?

Art. V.—1. *Versuch über den politischen Zustand der Vereinigten Staaten von Nord America, &c. von Frederic Schmidt.*

Essay on the political condition of the U. S. of North America, by Frederic Schmidt. First volume, 8vo. Stuttgart and Tübingen. 1822.

2. *Meine Auswanderung nach den Vereinigten Staaten in Nord America, &c.*

My emigration to the U. S. of N. America in the Spring of 1819, *and my return home in the winter of* 1820. By Ludwig Gall. 2 vols. 8vo. Treves. 1822.

Our readers will give us credit for having devoted a fair proportion of our pages to the literature of Germany, and we may appeal to their recollection that we have done ample justice to the value of its language and the intellectual stores deposited in it. A new species of German literature, however, is growing up, for which we cannot promise so much. In our number for July, 1820, we gave a brief account of a specimen of it, 'the German in North America,' of the baron von Fürstenwärther, not at that time foreboding that the noble baron's brief essay was to serve as model for a new class of writers, on our country. It is not often that the progress of improvement is more rapid, than it has been in the baron's school. It may be truly said that the little finger of Mr Frederic Schmidt or of Mr Ludwig Gall is thicker, than the baron von Fürstenwärther's loins. The two works before us will compare advantageously with the happiest efforts of Beaujour or Fearon; and the Germans have so often been the butt of other nations, that it gives us pleasure to see them at last acting vigorously on the offensive, though it happens to be against the nation, which has given them least provocation. It is very far from our intention to enter the lists with either

of these gentlemen; and our notice of them will be little else than a series of extracts from their works. Scandal of all reading is the most piquant. No articles in the Quarterly or Edinburgh Reviews are read in America with so much relish as those in which our country is most severely taken in hand. And while the works before us certainly possess this interest, one of them at least has the additional recommendation of the zeal of the author to expose himself to ridicule, while he thinks he is belaboring America. Since the exploits of the knight of the rueful countenance, nothing to our knowledge has appeared half so happy in this way. Mr Ludwig Gall is the sternest simpleton we ever met with; and though he occasionally paid dearer than we could wish for his intrepid imbecility, he shakes his fool's cap with such menacing dignity, that we look on with no small awe.

Before proceeding to an account of the works themselves, we may perhaps be excused for noticing very briefly the remarks, in which the first of the authors above named, has seen fit to reply to our review of the baron von Fürstenwärther in our number for July, 1820. We do this the rather, as we suppose they proceed from the baron himself. He first charges us with ignorance, in calling the emigration from South Germany to America in the years 1817–19 'prodigious,' alleging that, for twenty one months, from March 1, 1818, to December 11, 1819, 'there were not more than twenty four hundred emigrants from the provinces of the Rhine, Würtemberg, Baden,' &c. and adding that, 'when we farther consider that this emigration is from the most populous part of Germany, whose superfluity requires a diminution from time to time, it is altogether erroneous to call it 'extraordinary.' *Extraordinary* we did not call it, and we leave Mr Schmidt to ascertain, whether even his twenty four hundred in twenty one months be an usual or an unusual emigration from the south of Germany. We called it, however, 'prodigious,' and shall rather than undertake ourselves to contradict Mr Schmidt, appeal to his countrymen. The baron von Fürstenwärther tells us, that from the 12th of July, 1817, to the early part of 1818, there arrived six thousand German *redemptioners* alone, being for nine months, about three times as many as Mr Schmidt allows for twenty one months. The redemptioners are of course only a part of the

emigrants. Mr Gall informs us that the emigration continued for a year or two to be equally great. This is only to the United States; but our remark did not confine itself to the emigration to this country. We spoke in general terms of the emigration from the south of Germany. Whether it is 'altogether erroneous' to call that *prodigious*, Mr Gall shall decide. He thus speaks in the beginning of his work.

'How extensive was this apprehension, is established, beyond question, by the fact that, according to the public prints, the stream of emigration, which in the year 1818 had carried nearly *thirty thousand* men by Mentz, down the Rhine, did not appear to have diminished for the first half of the year following;"

at which time Mr Gall himself joined it. He adds, moreover, that this emigration was chiefly from Würtemberg and Switzerland. Whether thirty thousand men from these two countries be a 'prodigious' annual emigration, we leave to the reader. The kingdom of Würtemberg is computed to contain about one million four hundred thousand inhabitants.

But Mr Schmidt will have it that by calling this emigration *prodigious*, we not only betrayed our ignorance of the circumstances of his country, but of our own; 'for,' addeth he, 'no where is the emigration greater than in America.' This we are fain to pronounce a *non sequitur*. We certainly never denied that a 'most prodigious' emigration, to borrow Dominie Sampson's phrase in its full form, is going on from the Atlantic to the western states. It is true we doubt Mr Schmidt's accuracy, in giving the emigration to Missouri in the year 1819 at forty thousand in five months. By the census of 1820, the population of that state was sixty six thousand five hundred and eighty six, and as it was estimated at sixty thousand in 1818, one can hardly go along with our author, in allowing that in five months of 1819, it received an accession of forty thousand. This heedless exaggeration will serve as a good specimen of our author's statistics. Whether the emigration, however, to the western states be great or small, we certainly gave our author no reason to argue that we were unacquainted with it.

It was not, however, this that he probably meant to urge. He has not himself succeeded in stating his argument; and we will do it for him. We inferred from the mighty emigration from the south of Germany, that things must there be in

a very bad state. Mr Schmidt meant, we suppose, to reply, that, on this principle, things must be in a very bad situation, in the Atlantic states of America, because a still greater emigration takes place from them to the west. In this form, had he so stated it, his argument would have been ingenious and plausible; but still groundless. The cases are very different. The poor German redemptioner, wanders away from his country, against the will of his sovereign, and at the sacrifice of his citizenship, encounters the hardships of the passage, which Mr Gall paints in much such colors as those in which the middle passage of slave ships is usually represented, submits to three or four years' servitude, as the price of his passage alone, and endures all the hardships unavoidably incident to a poor foreigner in a strange land, where manners, language, laws, and government differ so entirely from his own. This is a very different case from that of the enterprising young farmer, who crosses the mountains, with an axe on his shoulder and fifty dollars in his pocket, to a region, which he scarcely calls distant, for he finds in it his own language, his countrymen, and the government under which he has always lived.

In the close of his remarks on America, the baron von Fürstenwärther thus expressed himself in a passage, which we cited from his work.

'With such advantages, on the part of the United States, which every impartial man will recognise with me, and with all the facility, particularly *of the material life*, I cannot conceal some defects and dark sides. In this country there is no idea, nay not a distant suspicion, of a high and finer existence, at least on this earth,' &c.

By 'material life' we supposed the baron to mean all those things, which belong to the physical rather than the moral and intellectual man, and we observed that all that is comprehended under it, seemed to us to abound in those parts of Germany, out of which the tide of emigration sets most strongly; and that accordingly this emigration must have its origin in moral and political causes, as it certainly does. Though we laid no stress on this fine phrase of *material life*, Mr Schmidt appears to have been a good deal aggrieved at our interpretation of it, and expresses himself as follows:

'By material life, which the reviewer, as it seems, did not understand, is meant, in Germany, neither roads, nor plantations,

nor agriculture, nor fine forests; but it expresses the prevailing inclination of single persons and whole nations, to satisfy their physical wants and regard their belly as their god. According to the reviewer's notion, the whole world would belong to the material life. It is matter of astonishment, therefore, that the reviewer should have learned so little on the German soil, that he could not even carry home with him this idea. When we speak then of *material life*, we understand by it a prevailing effort after eating and drinking, and the possession of superfluous goods. We understand by it men, who take more pleasure in a cattle show, or a breed of swine, than a Venus de' Medici or a Laocoon. Will the reviewer have an example of an actually personified material life, he may imagine to himself an American physician in one of the most public streets of Philadelphia in a Norwegian cold of five below zero, carrying home a whole quarter of pork, coughing as he goes, and gloating with wishful eye on the meat, which has now become his idol.'

Upon these assertions of our author, and his pertinent illustration, arise two questions, one of fact and the other of principle. In point of fact, we would ask—did we mistake Mr von Fürstenwärther in the interpretation we put on his phrase? Nay, does not our author, in the main, mean the same thing? What does he make his material life to be, but fondness for eating, desire for superfluities, taste for cattle shows, and the breed of pigs, and especially, the carrying home from market, in a cold day, of a quarter of pork? We assure the abstemious Mr Schmidt, that, though we did not illustrate the phrase so amply, we understood it precisely as he appears to do. He says that the Germans do not include good roads, agriculture, and forests in the material life; but do include cattle shows and breeding swine. But we would ask this nice discriminator, how he is to fatten his cattle without agriculture; and so far from the breed of swine being unconnected with forests, the Westphalia hams of his own country are said to owe their admirable savor, to roaming through the woods and to the quality of the smoke of the juniper tree, in which they are cured. With regard to the unfortunate Philadelphia physician, surprised by our author in carrying home a quarter of pork, we cannot but exclaim in the words of Mr Southey:

> 'Jacob, I do not like to see thy nose
> Turned up in scornful curve at yonder pig.'

If our author be not a Jew, we presume he will not find any particular materialism in eating pork, even when the thermometer is at five below zero; and as for bringing it home from market, we wish we may never meet a doctor with any thing more dangerous about him than a few pounds of pork. If by all this eloquent explanation of material life, Mr Schmidt means to say that the Americans are very curious in the quality, and gluttonous in the quantity of food, we shall take the liberty to differ from him. More *meat*, pork as well as other kinds, it is true, is eaten here than perhaps in any other country; but the English eat more on the whole, and the Germans much more, than the Americans; and as for cooking, there is no place in the world, where that noble art has been less cultivated than in these United States. At any rate, did we think it wholly delicate, we could give the author a match for his Philadelphia doctor, which would teach him, as a German, the prudence of not saying much on this part of *material life.*

The other question regards the real dignity and importance of this material life, on Mr Schmidt's own explanation. It will be remembered that the topic under discussion was the temptation, which the United States hold out to emigrants from Germany. And the question is, how far, in this connexion, it is a reproach to a country that good eating abounds in it, and that the people indulge therein. For our own parts, we see nothing opprobrious in this. It is very easy to make speeches about material life—and preferring a show of cattle to a Venus de' Medici; but is there any thing really contemptible in the business of eating? To sift the matter closely, which would one choose for his standing dish, a Laocoon without meat, or meat without a Laocoon? Pray what is there mean, in the nourishment of our wonderful bodily organization, by the appointed mode? Does the philosopher find any thing unworthy, in the subject of that mystery of assimilation, by which foreign *matter* is united with our frames? Does the statesman look with disdain on the great topic of the sustenance of millions? Does the student of the fine arts, the true student of beauty and grace, really despise the consideration of the manner, in which the various lifeless particles, are transformed into living and sensitive forms? To take our author's own example of the cattle shows, is not a noble bullock, such as may sometimes be seen at our cattle shows,

whose iron neck and compact frame are clothed with an almost silky fur, whose beautiful shape seems the very compound of symmetry and strength, and whose fine appearance is the least of his recommendations; is not such an animal, in any rational, philosophical, or moral point of view, as worthy an object of curiosity as the statue of the courtezan Phryne idealized—forsooth—as the Venus de' Medici? Nay, we go farther, and maintain, that if our author had ever seen one fine pig of the Bakewell breed, he would pronounce a milder judgment on his poor Philadelphia doctor. Or, if he had ever contemplated that gaunt, voracious animal, the common hog, with high back, long legs, and appalling maw, and reflected how much of the substance of the land such a breed consumes, and how poorly, after all, they cut to pork, he would not have sneered at the exertions of the immortal Bakewell. We pronounce, without scruple, that more has been done for human happiness, by the introduction of this small-boned and kindly fattening breed of swine, than by the publication of Winckelmann's history of the ancient arts; and before our author speaks so disrespectfully again of such a sweet-fleshed animal, we will thank him to remember that it was a litter of pigs, which guided Æneas to the foundations of the imperial city:

Tantæ molis erat Romanam condere gentem.

How much that classical nation of Romans—the very people, into whose possession the Laocoon and Venus were cast—suffered for the want of cattle shows, may be seen in the miserable resort of Romulus and Remus for milk; a thing that never could have taken place, had the breed of Fill-pail existed among them.

Mr Schmidt closes his reply to us with some general and pretty angry remarks on the subject of 'freedom, confidence, and equality of rights,' which we implied to belong to America, and intimated to be wanting in Germany. We did, however, but quote, in a different form, a part of Mr von Fürstenwärther's words, even in his most tragical exclamation over us. 'If,' says he, 'the Americans are justly proud of their civil freedom, and of their freedom in thinking, speaking, and printing, and in the social life, they still know not that higher freedom of the soul, which is to be found only in Europe, and, I say it

boldly, most abundantly in Germany.' To this charge, if it be this which Mr Schmidt would reiterate, we plead guilty. If there be any freedom higher and better than that of 'social life, of speaking, printing, and *thinking*,' we are content with the latter, and resign the former without a murmur, satisfied with what Tacitus calls the rare felicity of the times, ubi sentire quæ velis et quæ sentias dicere licet.

Mr Schmidt argues that the slavery, which prevails in the southern states, the buying and selling of men in open market, is inconsistent with freedom. We certainly have no call to defend the institution of domestic slavery, but, if it deprive America of the right to be called free, what becomes of Greece and Rome. Were not the Spartans free? Were not the Athenians free? Was old Cato a foe to freedom? Were Brutus and Cassius foes to freedom: and yet they had slaves, chained by the neck to the door-posts of their houses; countrymen, very likely, of Mr Schmidt, for your Roman lord placed an especial value on a transrhenane slave. That very Apollo and that Venus, the mere admiration of which, according to Mr Schmidt, proves a man to possess the finer freedom of the soul, were hewn for the greater part by slaves: if made in Rome, as some think, wholly by slaves. 'The Würtembergers were free,' says Mr Schmidt, 'at a time when bears and elks roamed upon the coasts of America.' We strongly suspect that, at the time the bears and elks were in possession of the coasts of America, the Würtembergers, so far from being free, were attached to the soil, and 'bought and sold in public market' with it. *Leibeigenschaft* (a word, for which there is no familiar English term, but which bears in our ancient laws the ominous name of villanage) was the particular form of freedom, which the Würtemburgers, in common with their brethren in the other parts of Germany enjoyed, till a very late period. This '*Leibeigenschaft*, or *bodily property*, is' (says Hegewisch, a well known respectable German writer, and the latest on this subject) 'essentially identical with slavery, inasmuch as the Leibeigner, like the slave, is the property of his master; and the right of property of the master in the person of his slave is only a little less restrained than in the case of a Leibeigner.' This slavery, we believe, still exists in some parts of Germany. The king of Prussia abrogated it in 1739. In 1781 it ceased in Bohemia and Moravia, in 1783 in Baden. When, if ever,

it was formally abolished in Würtemberg, we know not; probably in the late new constitution. So much for the freedom possessed by Würtemberg, or by Germany, at the time when America was possessed by the bears.

But we have dwelt much longer than we intended, on Mr Schmidt's reply to our observations. It is no part of our present or former design to enter into an encounter of wits, for the sake of vllifying Germany or the Germans. We stated, in no offensive terms, what every body knows, and what we could bring a plenty of German writers to avouch, that the emigration from that country is caused by the unfavorable political and social condition of its lower orders. If Mr Schmidt is disposed to quarrel with us for this, he must first dispose of Mr Gall, and of nearly all the literati in his own country, who have expressed any opinion on the subject.

Mr Schmidt's work, of which the first volume only has appeared, is to consist of three volumes, in two parts, one treating the political and one the moral condition of America. The following sentences, from the preface, will afford a good idea of the spirit, with which he goes to work:

'America, the land which has been sung in strains of enthusiasm, is an old man in the cradle, a dead hull of nominal freedom; the youthful confederation has sunk into a moral nihility, and suffers the pains of extreme age. Could Washington arise again from the bosom of the earth, he would regard, with horror, the work of his hands destroyed by his posterity with impious scorn. But here, as in other lands, there are upright men, who might boldly place themselves by the side of the honorable of other nations; but they are widely scattered and cannot thrive on the meagre soil.'

The mass of the book is a heavy geographical and statistical compilation from ordinary sources, and contains little, which appears to be the result of personal observation. It is amusing to see the contradiction, on several points even of fact, between Mr Schmidt and Mr Gall, whose works appear at the same time, in the same region, and with the same general object. Thus Mr Schmidt is very sure that the climate of the valley of the Mississippi is identical, in the same parallels, with that of the Atlantic coast, and establishes the fact by all sorts of proof. Mr Gall is equally sure that there is a considerable difference, and proves it to equal satisfaction. It is

worth while to compare the accounts of these two valuable writers, on a point so simple as this.—'It is therefore clearly proved,' says Mr Schmidt, that no difference of temperature exists between the eastern and western states, and that this opinion must have had its origin in local phenomena, which ought never to lead to general conclusions.' p. 62.—'Hence arises,' says Mr Gall, 'the greater heat of the country west of the mountains, increasing as you approach the Mississippi, on whose banks the difference in the same parallels amounts to three degrees.'

Nothing enables readers to bring the accuracy of a writer to the test, more directly, than observations which relate to their own immediate neighborhood. We accordingly quote the following passages, to show to what advantage the Bostonians figure in Mr Schmidt's trust-worthy chapters.

'Boston, at that time the Heligoland of America, had become the depôt of the United States. Favored by the English navy, and engaged in a rebellion against the government of their country, which made but a feeble defence of their rights, *they pursued their commerce at sea as usual.* The consequence was, that necessaries and goods rose in all other states just in proportion as they were distant from New England, and that all orders must be sent thither, of which payment in specie was required. The demand for specie was therefore so great, that the banks were not in a condition to satisfy it. Accordingly in August and September 1814, there took place an universal suspension of specie payments, on the part of the banks of the United States, with the exception of those of New England, which best managed to sustain themselves.'

The following instructive and temperate passage follows some quixotic statements, on the subject of banks.

'Now I ask whether, in any part of the world, such diabolical extortions are permitted? Does it not cry to heaven, that the government of the United States permits such oppression of the people? And does that deserve the name of a government, which permits the welfare of the nation to be undermined, before its eyes? The banks of the United States exhibit all the qualities of fraudulent monopolies: they stop payment whenever they please; pay in silver if expedient, and if not, in lead. They are banks for discount and circulation, and a merchant engaged in extensive business takes good care not to commit treasson against them: for their teeth are like a lion's and destroy

mankind. Whatever most revolting has occurred in Europe, in this age of paper money, is child's play, compared with these events, which deserve to be treated in detail, by some one competent to the topic: [Mr Schmidt, for instance, who, as our readers see, is competent to any thing.] It would unquestionably be the most important illustration of unbridled avarice, originating in the dregs of a nation of traders, and would especially convince the world of the great truth—that arbitrary power and oppression, under other forms, exist in a far greater degree in America, than in the so much calumniated ancient world; for in America a man marches into jail for a dollar, or is gradually destroyed by banks and brokers, counterfeiters and swindlers.

'Why the government of the United States, as well as that of the several states, are so little disposed to put a stop to these abuses, appears from the fact that the banks and the government are 'hand and glove' in the business. The former are the favorite children of the presidents and the congresses, of the governors and treasurers of the states, because they are the greatest stockholders in the banks. By this means (?) an indirect taxation of the country is effected beyond all taxes hitherto known. Hence it happened also that five out of twenty-five of the directors of the state bank were chosen by the government in order to secure them more effectually.'

In a note, our sapient author intimates that the only banks of any utility are those on the plan of the bank of Hamburgh! If it were not labor lost to point out contradictions, on the part of such a writer as this, one might ask, how is it possible that frauds, so great and glaring as those which he describes, should be practised among a people so shrewd, keen, and wakeful as the Americans are represented, by our author? A hundred passages might be quoted from his book to prove, that money-getting is the sole employment and thought of Americans of all ages and professions. He has no where intimated that, in this pursuit, they are simple, credulous, or blind to their interest; but, on the contrary, he and Mr Gall both depict us, not only with harpy claws, but with a hawk's eye, and a vulture's scent,—and this throughout the country, of which they saw but a small part. Now, under these circumstances, though all, it seems, are willing enough to defraud, who is it, that is so entirely resigned to being defrauded? A distinguished English authority indeed says,

> Doubtless the pleasure is as great
> Of being cheated, as to cheat:

but whether that particular form of being cheated, which consists in being ruined by 'banks, brokers, counterfeiters, and swindlers,' be a pleasure of the highest order, may admit of doubt. At any rate, if it be one, it certainly is not the pleasure of the keen money-maker; and if the Americans are so extremely *gullible*, on this score, as our author represents them, he really ought to abate a little of his charge of keen and merciless attachment to money-making.

We will give another translation from Mr Schmidt, not that his opinions, on either subject, are worth confutation, but to show how grossly he contradicts himself. In a paragraph quoted above, our readers have observed, that he alleges Boston to have been a *depôt* of English goods in the war; to have, by the aid of the English navy, kept up its foreign trade as usual, and thus to have forced the whole United States to come to Boston, with specie, to buy the necessaries of life (Bedürfnisse und Güter). Now hear this same gentleman;

'During the war, this importation [of English woollens] for the most part ceased, and so great was the want of them, that many of the troops, stationed in Canada, died for want of clothing. The government, in consequence, in their embarrassment, are supposed to have ordered the seizure of Amelia island, principally for the sake of furnishing blankets for the half-frozen troops.'

Could then the American Heligoland, carrying on its usual commerce under the protection of the English navy, thus made a *depôt* of dry goods for the United States, draining their specie and breaking their banks, could it not furnish blankets for the army? But even this is not enough for our author's digestion. After first telling us that Boston was, during the war, the great magazine of the country, and that the Bostonian commerce, convoyed by the British navy, laid all America under contribution, and after having, notwithstanding, added that not a blanket was to be had for love or money, he again tells us, in the same chapter, 'that all the necessaries of life, during the war, commanded good prices, and employments multiplied to such a degree, that the internal trade alone was sufficient to keep the population in full activity, *and every member of the great family in good subsistence.*'

Of the general remarks of this author on commerce, manufactures, &c. it is sufficient to say, that he has merely copied

the statements of the publications of the day. That he even understands the principles which he defends, does not appear; that his defence is of any value if he does, no one will imagine from what we have already quoted. Into the discussion of the question between the importers and manufacturers, we certainly shall not enter on this occasion, nor treat the important subject with so much disrespect, as to trouble ourselves with these flimsy compilations *pro* or *con*.

We accordingly proceed to the work of Mr Ludwig Gall. We ought to treat him with some indulgence, in consideration of the little mercy he has shown himself. So simple a man as Mr Gall, we are sure could have no enemies; otherwise, instead of the following motto, in a curious language which he often quotes, but which we do not understand,

> That what is base aware
> No polish can make sterling,

he should have taken the words of Job, 'O that mine adversary had written a book.' Did all authors treat themselves as Mr Gall has done, the business of reviewing books might stop, and that of writing them too, for the art of printing would soon drop into disrepute. Every man, woman, and child, whom Mr Gall approaches, defrauds him. The government of his country, the Prussian, treats him with disdain; the chosen friends, who joined his society, fall off; the Swiss confederates play upon his credulity in the most unheard-of manner; his company of fellow emigrants rebel against him, and require to be brought to their senses at the mouth of the loaded cannon on deck, and that, after one of them had made an attempt to throw him overboard. Arrived in New York, not only does every American cheat him—that is a matter of course—but his own countrymen, the German societies, straightway fall under his displeasure. The worthy and Rev. Mr Hellmuth, recommended by baron von Fürstenwärther as a suitable person, to whom the societies in Germany for the encouragement of emigrants, should address themselves, receives some very left-handed compliments from our author. A young Hamburgher, whom he took into his service in New York, and whose debts he paid, cheats him, insults him, and leaves him in Philadelphia. Several passengers, whose passages he had paid on condition of their service in America, run away from

him by the time he is cleverly landed; and a few servants that remained faithful, the very Abdiels of his rebel redemptioners, drop off, one by one, on the way from Philadelphia to Harrisburg. Scarcely is he arrived there, when his last and only remaining redemptioner informs him coolly that, by the custom of this country, he shall leave him, unless permitted to sit down with him at table; and finally at the close of his pilgrimage here, when he had printed a small pamphlet of advice to the Germans, his bookseller at Harrisburg, a German, and, as Mr Gall tells us, one of the best men in the world, breaks his contract and cheats him. The truth is, there is some pleasure in cheating a man like Mr Gall. There is such a readiness, a hearty, unsuspecting ignorance about him, an Olympian self-conceit, in which he thinks he knows all things, a promptness in drawing out his purse to pay, and, when it is too late to help it, such a sagacity in discovering the deception, and such a hoarse stentorian shout after the thief, that we have rarely conceived, in so lively a manner, the pleasure of imposing on the credulity of others. One remark, however, we must be permitted to make before proceeding to a farther account of Mr Gall's book. As we have observed, every body cheats him; and he is pretty clear and full in setting it down, but with this difference: when done by his countrymen at home, by the Swiss or the Antwerpers, it draws forth no general inference against their several countries. On the contrary, his anecdotes of the truly flagitious frauds, which seem to have been practised on him by the German Swiss, with whom he was engaged, are accompanied with epithets highly to the commendation of his *dear* countrymen, whom he compliments with *gradsinnig*, and every other fondling term, which a man can bestow on his grown-up neighbors. When he arrives in America, however, and, in the low company into which he falls, is in various ways imposed upon, each new instance is announced with solemnity, as characteristic of the people. If the owner of a miserable Irish hovel, in which he takes refuge in New Jersey, overcharge him, or the driver of a set of farm wagons, in which our exquisite traveller seeks conveyance, take advantage of his simplicity; it is a proof that the Americans are a trickish set; and where the knaveries in question happen to be practised by his own countrymen in America, then his ingenious inference is, that the American air has corrupted them.

But we will lay before our readers a short account of Mr Gall and his work. This gentleman was a clerk in some department of the Prussian government, in the Rhenish provinces; and rapt into enthusiasm by the eloquence of the baron von Fürstenwärther and his brother-in-law von Gagern, determined to resign his office and devote himself to the cause of the German emigrants. To this end he and seven of his friends undertook, at Treves, his home, to form a society for the aid of poor emigrants, in leaving Europe and settling in America. It was proposed to call it the Gagnerian Society, Mr von Gagern having delicately volunteered to allow all associations for this object to bear his name. The thing had by this time reached the point, where the paternal governments of Europe generally interfere. Our philanthropists were given to understand that the ministry at Berlin did not thank them for their pains, and many, as our author pathetically remarks, who were well disposed to the association before, in consequence of hints to this effect, kept aloof. A society had at this same time, viz. the end of 1818, been formed at Bern in Switzerland, with a view of founding a German colony in North America; and a friend and associate of Mr Gall immediately wrote to the Swiss brethren proposing to make a common cause with them. The offer was promptly accepted, and Mr Gall and his friend were informed that a company had been constituted, and shares taken by wealthy and respectable people at Bern, to promote this great end of founding a settlement in North America. Soon after, our author himself wrote to Bern, with an offer, which was thankfully accepted, to subscribe for twenty or thirty shares of the colony stock and join the party, as one of the commissioners for selecting a site. All this time he was unacquainted with the persons, characters, and designs of his Swiss confederates, and knew them only from their own advertisement in the newspapers; evincing the same sort of discernment as would be shown in common life, by running after 'the fine chances to invest capital,' the 'respectable single gentlemen with easy fortunes, that seek a partner for life,' and other tempting proposals, which are daily wasted on a shrewd community.

No sooner was this considerate union with his Swiss formed, than Mr Gall took his great step, the publication of 'his call for the formation of benevolent societies in one of the

most important affairs of the age and of humanity.' This call was published at Treves, January 23, 1819, and our author seems to consider it as his passing of the Rubicon. He immediately communicated it to the fraternity at Bern, and received the following answer, which will throw some light on the character of these gentry.

'*Bern, February* 6, 1819.

'I have now to answer your letter of the 25th of January, which I had communicated to some of the most important partners in the concern. Captain St—— von H—— writes to the house of Maudrot and Opermann in Havre, and informs them that you will send your effects thither, addressed to them; at the same time, he lays before them some questions, which regard our undertaking.

'The departure hence will take place about the first of April. There is no question of finding ships ready to sail at Havre. The port at which to land, connot so well be settled here. As we are to consult Mr *von* Gallatin the American *ambassador* at Paris, several points will be afterwards better settled than now; and I acccordingly forbear to answer this question. Here, without counting your shares, four hundred and twenty are subscribed for, and a considerable number will shortly be added. The ambassador Mr von Gallatin is a native of Geneva, and has a very important influence in the American government. In order to give the affair still greater weight, *Mr von Wasseroth von Bincy* has been named a director.'

On the 4th of March, our prudent author bethought him of applying for the royal sanction of a society to promote his great object, and received the following pretty pointed answer.

'To your letter of the 4th, directed to the president of this board, we reply, that we cannot permit the existence in this place of a *Gagnerian* society, so called, as, in conformity with the well known provisions of the law, no society for public objects can receive a statutory formation without the particular consent of the king.

'You, in particular, having been dismissed from the duties of a servant and subject of the king, have no right to erect such societies in this place, or to engage in other public transactions of the kind. On the contrary, you are regarded by the laws precisely in the light of an alien, and have to govern yourself accordingly.'

Thus the business of societies was effectually checked, and about the same time Mr Gall, to his no small astonishment, received a letter from the 'captain —g— von —d—' at Bern, informing him, that, notwithstanding what had already been written to him about sending his effects to Havre, they had not yet fixed on that port for embarcation, and asking Mr Gall some questions about Antwerp. Here we must apologize to our readers for the singular notation, which we are compelled to employ in recording some of the heroes of this tale. It is Mr A. and Herr von B. and captain C—— von D. and so on, through the alphabet; a sort of revised edition of A apple pie, B bit it. Though, from Mr Gall's account, he found a good deal more of the *B bit it* than of the *A apple pie*. Mr Gall in replying to the letter of this most alphabetical captain —g— von —d— 'did not disguise his vexation at the indiscretion with which Mr N. had written to him from Bern, and occasioned him to send his effects to Havre, while neither the time of departure nor the place of embarcation was fixed on.' Mr Gall also wrote to the said Mr N. 'to recommend to him more circumspection and foresight.' Circumspection and foresight recommended by Mr Gall, who, in consequence of being told that a letter had been written to Havre, by people whom he knew neither personally nor by reputation, sent his baggage down from Treves to Havre on the way to America, in the month of February, to embark in April! Circumspect Mr Gall! Mr N's answer to these edifying letters consisted in telling Mr Gall, that the stockholders would meet on the 16th of March, to determine what to do, and on the 18th of March, he was informed that the meeting had been held, that he himself, with Mr L—— of Geneva and Mr N. of Bern, were named commissioners, and that the *commission* would meet at the latest by *the end of April, in Antwerp*. Mr Gall having six weeks before sent down his baggage to embark from Havre the 1st of April, was probably by this time a little short of various articles of dress, which shall be nameless.

At length Mr Gall thought it necessary to be in motion, and the following extract from his journal, whatever credit it may do to his sensibility, will not serve to give a very high notion of his qualifications for the undertaking, in which he voluntarily engaged. He should never have resigned his clerkship, nor ventured out into the bustle of life.

'*On the Moselle, April* 6, 1818.

'The journey to the port of embarcation admits of no longer delay. For the first time, I was overwhelmed at the thought of the approaching separation from all that was dear to me on earth, from my native land, from the beloved companions of my early years, from so many good, excellent, rare men; and then the gloomy probability of never, never seeing them again. "Farewell, then, forever!" wrote me a beloved kindred spirit, by whose side I had dreamed away the fairest, happiest dream of my life, and "forever" long echoed hoarsely in my inmost soul. All this awakened gloomy feelings, and I will not conceal, that, in this state of mind, I would have turned back, had not my "call," of January 23d lifted itself as a fearful wall of partition between me and Europe. [Who could fear for the balance of power, with Europe on one side of the wall, and Mr Gall upon the other?] The nearer the hour of departure came, the busier was my fancy in calling up, before my soul, a train of glorious images, with which a world of paradisiacal recollections was associated. How did a thousand things, to which I was indifferent before, now attract me, and with what childlike melancholy, did I dwell on every thing, which I was to leave behind! I was obliged to summon all my powers in order not to yield.

'Not so my wife, nineteen years of age, whom no prayers, no promises, no tears of the tenderly solicitous and inconsolable parents, could persuade to allow me to make the first voyage of investigation alone. Still and reserved, she had already made herself familiar with the pang of separation; and thus, though she had never before left the neighbourhood of her parents, was enabled, in the most solemn moment of departure, with the resignation of a devotee to tear herself from the arms of the best of mothers and of the kindest brethren and sisters, who clung fondly around her and would not let her go. We departed. To avoid bidding adieu to our acquaintances, we sought the remotest streets of Treves, on our way out of the city, accompanied by my brother alone. What a struggle did it cost him to repress the violence of his feelings, in order not to embitter the last moment! But in vain; for, as he caught a glimpse of my cabriolet, which had been sent forward, he could no longer con tain himself. I also was obliged to give vent to my swelling heart. But my wife had not yet lost her calm self-possession. But we were now driving away through a region, where every tree, every bush, every spot had become interesting to her, where every path reminded her again of all the dear ones left behind, with whom she had a thousand times traversed this beautiful valley, engrossed by the most cheerful and joyful

sensations. To day every thing wore the sombre tint of her increasing melancholy, and every thing seemed to nod to us a last, an eternal farewell. As yet she had only breathed more heavily; but when, at length, the highest towers and spires of the city, the last common objects between ourselves and those dear to us, vanished in the blue mist, then she sought in vain to suppress a moist pearl in her eye. Grief overpowered her constancy, and the long repressed tears now flowed without measure.

'The moon lighted us as cheerfully on to Lieser, as if it had known nothing of our departure. Here an opportunity offered itself, which I gladly embraced, of pursuing our journey as far as Cologne in a Moselle bark. In the house of her sister at Lieser, every thing served to renew the melancholy, which my wife had yesterday experienced. On this harpsichord, she had often played her favorite tunes to her listening mother. That sparkling glass goblet, with a sun upon it, and the inscription "may it illuminate thy life," was never filled, but with the aromatic vintage of 1811 for her father. There the bower was her father's favorite resort, and this rose had been planted with her own hand, to please him. And now again the horror of an everlasting separation, from a dear sister! Who could support this trial! She was beside herself, and my heart bled, when I considered myself as the destroyer of her happiness, and yet could not return.

'The sun was just sinking in full splendor beneath the lofty ruins of the tower of Bernkastel, and gilded the tops of the opposite mountains. Gently beat the oars of the little boat which was taking us to our bark, and the melting note of a solitary nightingale, penetrating to the inmost soul, would interrupt at intervals, the holy calm that surrounded us. In an hour we rowed to our vessel, and before we had passed the beautiful and romantic Trarbach, the talkative spouse of our captain, an obliging, cheerful dame, succeeded, in conjunction with the mild influences of a noble morning, in restoring my wife to her spirits.

'As we leisurely followed the stream in its meandering course, we enjoyed the delightful variety of its picturesque banks. Rough and woody mountains constantly interchange with sunny vineyards. Here and there discloses itself a happy vale with cheerful dwellings, contrasting strangely, but not unpleasantly, with stupendous ruins that arise in mournful pomp from their precipitous rocks aloft into the clouds. Little cities, prosperous villages, beautiful country seats, gardens, meadows, fields, and orchards appear at every glance; but nature still lay in her wintry slumber, and allowed us only to fancy the ravishing beauty of her awaking!'

We have made this long extract, because it is one of the most amiable passages in Mr Gall's book. It shows, to be sure, a character ill calculated for any active duty, if a mere voyage of investigation across the sea, from which he was to return in eighteen months, had such an effect upon his nerves.

On his journey down the Rhine, Mr Gall stopped at Neuwied, the capital of a small principality of which the prince has made himself known, by a scientific voyage to Brazil, of which he has published the journal. The following anecdote will help to account for the emigration which takes place from Germany. We should like to know what sort of freedom the baron Fürstenwärther and Mr Schmidt esteem that, to which this little extract bears witness.

'I visited in Neuwied,' says Mr Gall, 'the mother of the poet Borkholder, who, in the year 1814, had been banished out of Nassau for writing the following couplet;

> "Scarce can a branch of labor thrive; the tax-
> Man comes and says, good sir, I'll go you snacks."

Having taken refuge on the left bank of the Rhine, he found subsistence and protection under Gruner's administration. In 1815 he was, however, dismissed again, in consequence of having bestowed a box on the ear upon one of his colleagues, who had been advanced above him, and who had, in consequence of some insult, challenged him. The next year he had emigrated to America, trusting more to his trade—he was a cabinet-maker—than his pen. I had known him well. With a clear head he united the best of hearts,' &c.

At Dusseldorf our author received information, with regard to the unfortunate emigrants, who, three years before, had left Germany for Holland, without any mode of supporting themselves in the Dutch ports, and finding no means of procuring a passage for America, were obliged, under circumstances of the extremest misery, to return.

'Many, unwilling to admit the necessity of returning, remained still in the neighborhood of the Dutch cities till the approach of winter. At last, violently undeceived, they set out on their return. Half-starved, covered with rags filled with vermin, and from the total prostration and wasting of strength scarce able to creep on, they arrived in the neighborhood of Dusseldorf. And yet it was out of the question to afford the most miserable any repose, for it was necessary to hurry them forward, to make room for those that followed. Those, who could not march,

were sent on in wagons. Almost every family had lost one of its members. An unhappy father of seven children, of whom the oldest was scarce twelve years, had become insane at the loss of his wife. "I want nothing," was his constant cry, in his delirium, "I want nothing, but a little bread for my poor children. One loaf, yes, *one* loaf, I have only earned *one;* but the poor worms cannot get their fill of that, and leave some for me to eat and be strong enough to work tomorrow for another.—See! look there! Three big, big dogs! See how they eat! O how they eat their fill! O God! God! let my poor children only eat their fill once! Shall we go to America? Oh yes, to America: there, there is plenty of land—all belongs to God—there I shall have a great, great field—and there we'll raise the corn and potatoes, and eat as much as we want!"'

Mr Gall exclaims with justice on this pathetic scene, 'what a frightful reality is contained in the ravings of this maniac. *One* loaf of bread—the purchase of a day's wages—for a father and seven children. A frank is the usual day's wages [twenty cents]. This commonly must support three, but often also five and six must live upon it.'—What sort of freedom is this, in the estimation of the noble and worthy vilifiers of America? Which spectacle does Mr Schmidt think most to the disgrace and infamy of a country, that of his Philadelphia doctor and the leg of pork, or that of the poor German emigrant, without the gates of Dusseldorf, maddening with envy at the rich meal of the dogs in the streets?

The 24th of April Mr Gall arrived in Antwerp, took up his abode at the hotel Pot-d'étain, *Tin-pot hotel*, and found letters from the precious captain St—— von G—— announcing that one hundred and seventy persons, from different parts of Switzerland, would be at Antwerp by the end of April, and directing Mr Gall, in behalf of the company, to charter vessels, engage passages, and lay in provisions for the voyage. An agreement was accordingly made with captain Kurz of the American ship Columbia of two hundred and fifty tons, half freighted, the captain consenting to give up to the emigrants the other half, for a sum of nine thousand franks ($1800), with the provision that for every passenger short of sixty, one hundred and fifty franks should be abated, but in no case so as to make the whole sum less than seven thousand franks. The captain also agreed to wait till the 10th of May,—after that a daily fine for detention of one hundred and forty franks

was to be paid. Moreover, as this vessel would accommodate a portion only of the party, another ship, the Eugenie, a French vessel of two hundred and forty tons, was chartered for seventeen thousand franks, to make the passage to America. Mr Gall, in the warmth of his enthusiasm for the vessel which brought him to America, has attached a lithographic print of her to his work; and poorer craft we never wish to see afloat. Mr Gall, not content with chartering these vessels, also went the length of entering into contracts for the supply of the provisions of the party, and became personally responsible to a large amount, and all on the faith of the Swiss gentry, whom he had never seen. How well they deserved this of him, we shall presently see. The 29th of April arrived, and nothing was seen or heard of them by Mr Gall.—Meantime a new event took place, which we relate, to show our readers with how much justice Mr Gall quotes the accidents which befel him in America, as proofs of the superior knavery of the lower class in this country.

On the 6th of May, he received an anonymous billet, informing him that the Eugenie, which he had chartered, was an unseaworthy and unsound vessel, and referring him for confirmation to one of the first magistrates in Antwerp. This worthy magistrate, on being applied to by Mr Gall, stated that he would not himself, for a hundred thousand florins, embark in the ship, and yet, as she was not perhaps technically unseaworthy, advised him to seek a compromise with her captain, and take another vessel; recommending to him the Prussian ship Emma. Full of these new views, and without pausing a moment to weigh the matter, Mr Gall ran to the captain of the Emma. The captain of the Eugenie consented to relinquish his contract for four thousand franks; but before any conclusion was made, Mr Gall happened to find out that he had been the subject of the following knave's trick. A company of separatists from Würtemberg, to the number of three hundred, had sent four of their spiritual heads to Antwerp, to engage a vessel for their transport to America. These leaders had employed the magistrate just alluded to, to procure them a ship, and the magistrate engaged the Emma. When the Würtembergers arrived, however, they refused to take the Emma, because she had not a Mediterranean pass [Türkenpasse]. The Emma was accordingly left

on the magistrate's hands, and, to be rid of it, he procured the aforesaid anonymous billet to be written, *falsely* representing the Eugenie as unseaworthy, in order to frighten Mr Gall from embarking in her, and to induce him to charter the Emma. What an elegy would not Mr Gall have sung over American faith, had this notable plot been hatched at New York or Philadelphia!

Since it is one of the main burdens of his book, as of that of Mr Schmidt, to charge the Americans with a shameless love of money, we shall say a few words more of the case of these same three hundred Würtemberg separatists, and their four leaders. These last gentlemen, besides proposing to bestow their whole company of three hundred into a Danish vessel of three hundred and seventy tons, charged each of the number at the rate of one hundred and forty-three florins the passage, although Mr Gall procured accommodations, every way superior, for his party, at one hundred and ten florins each. He very justly accuses them of putting the thirty-three florins' difference to each man, into their own pockets, and adding to this pecuniary fraud, practised on their flock, the infamous barbarity of crowding three hundred human beings into a vessel of three hundred and seventy tons, in addition to the ship's company. Mr Gall, who has a pungent speech ready on all occasions, made the following pertinent address to these pastors, in an interview which he happened to have with them aboard the Emma.

'Is it your design to put your party in that dark and dreary hole, into which neither the sun nor the air of heaven can penetrate; in which the breath of man soon becomes a deadly poison; in a receptacle [the lower hold] never designed for men, a thousand times more formidable than the most dreadful prison on land; in a space, where you, strong, healthy men, cannot stay half an hour, are you going to shut up for months, at sea, women, children, and the aged? Are you going to bury alive, to give up to the most tormenting death, those whom you call by the tender names of brother and sister? The unhappy wretches, whom intolerance drives from the peaceful home of their fathers, out upon the raging sea, who have placed their last hope, their whole confidence on your integrity; will you for a few florins expose them to greater dangers than they have fled from at home, greater than, but for you, they would have encountered at sea? That you have shamefully defrauded your constituents is plain, for you charge them one hundred and forty-three florins each, knowing

I had provided for mine at one hundred and ten. The difference, of which you rob your party, would amount to thirty-three florins each, had you provided the same accommodations for your party as I for the Swiss, viz. two tons to the fare. Instead of this, two hundred and thirty tons more than you have provided are wanting to make two tons to a man. These would cost you seven thousand florins, and therefore, besides the thirty-three florins each, you actually defraud your society of seven thousand florins. Be satisfied with this plunder, and make atonement to heaven, by giving up the shameful design of destroying the health of your friends and relatives. For your own sakes, let the power of truth put an end to the delusion, with which the devilish thirst of gold has possessed your minds. Imagine your own situation, on board the vessel, in whose bosom you are breeding for yourselves the plague. Think of your condition on the open sea; will you not tremble, with a guilty conscience, at every wind that suddenly swells the sails, at every wave that breaks over your vessel? And when the plague begins to rage within, and one after another is drawn up and thrown overboard, and you, lashed by the furies of remorse, shall be obliged to say of each, "him have we murdered, and him, and him, and him"—and when the cries of the children, whom your avarice has made orphans—the raving of the maniac—the moaning of the sufferers—the rattle of the dying, shall call down the vengeance of heaven on their murderers—think you, that then, as now, the sound of gold will lull the awakened conscience? Relent, accomplish not the horrid purpose, and you will escape the rack of remorse. Persevere in your detestable design, and God's just vengeance will overtake you beyond the waters.'

To this animated harangue—*lengthy*, we should call it, for an accidental meeting in the steerage of a vessel—the reverend persons addressed, replied, one of them, 'What is that to you?'—Another, 'What have you to do with our concerns?'—A third, 'The gentlemen, with whom we made the bargain, know how many such a ship will hold.' Now these were Germans, whose unsuspicious honesty, says Mr Gall, is the constant prey of the hungry Americans. These were Würtembergers, the noble and free people, who enjoyed liberty at a time when the bears and elks roamed on the American coast. The horrid project was defeated in a great measure by the menaces of Mr Gall, that on the arrival of the vessel in America, he would prosecute the captain for bringing more passengers than were permitted by the American law. Thus the

name of a wise and humane act of the American congress, that lawless, unprincipled, and powerless faction, as these gentlemen describe it, prevented two or three hundred free Würtembergers from being served up, by their pastors, as food for the sharks.

But we have left the thread of Mr Gall's story. By the 8th of May nothing had been heard of the Swiss, and Mr Gall began to have dismal forebodings of foul play. He accordingly set out to look them up, posted day and night back to Strasburg, learned, a little beyond that city, that they had descended the Rhine, turned on his heel, and had the satisfaction of going back to Antwerp, without however falling in with them, and through various mischances and perils, which we cannot stop to relate. One only is worthy of note. The boatmen, who took him down the Rhine, not choosing to stop to pay toll at a new-made bridge, where it seems the boats which pass under, like the wagons which pass over, are held to pay toll, Mr Gall had the pleasure of being fired at three times by the sentinels on the bridge. Of all the highways in a country, a good navigable river, like the Rhine, seems to stand the least in need of repairs, to owe least to human labor, and therefore to be the least proper subject of toll. Had such an event occurred to Mr Gall in America, we pledge ourselves that he would have cried out, first, against the extortion of the government in authorizing a toll for passing under a bridge; secondly, against the tyranny of placing sentinels with loaded muskets to enforce the payment of this toll, valuing a human life at two *kreuzers*; thirdly, against the villany of the boatmen, who, knowing these merciful regulations, chose nevertheless to violate them, at the risk of their passenger's life; fourthly, against the hazard of travelling in a country where such laws and practices exist. Not one of these remarks is made by our mealy-mouthed Mr Gall. But when in America, on passing a bridge with a segar in his mouth, and asking the daughter of a toll-gatherer to light it, he was presently after called upon by the toll-man, and bid to desist, as the law forbade the smoking of segars on bridges, Mr Gall breaks out in the silliest speeches that can be imagined, forgetting that for the like offence on the Rhine he was fired at with three leaden bullets. He arrived happily at Antwerp, after having travelled five hundred miles in six days, and returned as wise as he started.

A part of the Swiss company, and among them the captain von ——g—— had arrived meantime at Antwerp; and our author's first business was to wait upon him. We quote this passage as a fine illustration of all their characters.

'As soon as I had dressed myself this morning, I called upon Mr von ——g——. "Who are you, sir?" said a rustic booby—a Swiss in dress and dialect, who seemed to be keeping watch at the door. I told him my name. "His worship is just at breakfast," said he. "Announce me, nevertheless," I replied. He went in and was gone so long that I was about to go away, when he finally came again to the door and motioned me in. I almost fancied myself in the antechamber of don Ranudo de Colibrados. I entered the room and saluted the company with politeness. It consisted of two elderly and two young ladies, a boy, and a pretty corpulent man, from forty to fifty years old, with a pair of spectacles and a wig. Nobody rose save the two oldest ladies. The young ladies looked at me, with a quality air, and their papa gave me a gracious nod to approach. "Excuse me," said I, as I retreated to the door, "I have made some mistake. I thought I had the honor to see Mr von ——g——."—"Captain ——g—— von ——d. You're right, I am he," replied the gentleman in spectacles, without rising. "Who I am," I replied, "you know, and I must confess I expected a different reception from von ——d——." "Sir," cried he, springing up, "you must not forget that I am a nobleman!"—"It were to be wished," I replied, "Mr von ——g——, that you should forget it—or stay in Europe." "Indeed," said he, "but what the devil have you been driving round the world after?"—"Enough, Mr von ——g——," said I, "this very question I propose to you, and expect your answer at my lodgings." This is literally my first interview with Mr von ——g——. With these words—bowing to the ladies—I left the noble fools; afflicted at being compelled to seek, in a heartless intercourse with such a man in the wilds of America, a substitute for the intercourse of so many excellent friends.'

It is such trash as this, the refuse of all decent society in the old world, that would come to America, and pretend, in a new country, to set up for a new character. Mr Gall informs us, in his second volume, that this precious nobleman had gone into his own kitchen for a wife, and we doubt not when he too comes to publish his book, we shall hear about the total absence of 'all freedom of the soul' in America.

We had intended to give a little farther account of this

rabble, but our limits do not permit. The Swiss gentlemen endeavoured to make poor Mr Gall individually accountable for all his advances, and strenuously refused to pay their proportion, till compelled by the threat of legal interference. Moreover, it appeared to Mr Gall, the day before his sailing, to use his own words, that 'a great part of the company of emigrants designed for the Eugenie, were *smugglers*, *thieves*, *cheats*, *prostitutes*, and other characters of this class. Many of them had been let loose from the gaol, just before their departure, and their parishes undertook to pay their passage to America, under the condition of their never coming back.' These are the gentry with which Mr Gall had associated himself without inquiry, and taking it on their own word, that they were the first people in Switzerland. As grossly deceived, abused, and cheated, he deserves our pity; but to hear a person, after bringing such an infamous gang to America, complain of the reception they meet, vilifying us for not hugging the filthy refuse of German and Swiss prisons, to our bosoms, and parading mawkish sentences about coldness and reserve, is beyond our patience. Why, a man could not probably have taken one of Mr Gall's company by the hand, without great risk; and how do we know he is any better himself? Every body, by his own showing, turns his back on him in Europe and America; his government declares him an alien; his company is the dregs of the gaols, and his reception here by his respectable countrymen, uniformly cold and distant.

We shall not accordingly proceed with our analysis of his work, nor trace him through his adventures among the congenial rabble of this country. The insolent and indecent manner, in which he speaks of a well known and most respectable mercantile house in New York—whose names are more entitled to honor, on every score, than those of two thirds of the continental nobility—are sufficient testimony to the spirit of falsehood and calumny, which Mr Gall brought with him and which reigns in his book. In fact, the end for which he wrote it is very apparent. He had, as we have seen, offended the Prussian government by encouraging the emigration to America, and this is his peace-making to the offended powers. We had made, in the perusal of his second volume, a number of notes, by which we could have convicted the sentimental Mr Gall of having had nothing more at heart in his voyage, than

to make money by speculating on land, to the disadvantage of his emigrating countrymen. But our readers have heard enough of him.

Art. VI.—*Reports of cases argued and adjudged in the Supreme Court of the United States, February term,* 1822. *By Henry Wheaton, Counsellor at Law.* New York, 1822.

We regard the publication of the decisions of the Supreme Court of the United States as a most important accession to our juridical learning. To those of the profession who do not confine themselves to the narrow walks of the common law, and whose desires are not fully satisfied by adjudicated constructions of local statutes, the reports of Mr Wheaton must be extremely valuable. There are many, we would hope, who are far from being edified by the grave discussion of the trifling and ludicrous questions, with which so large a portion of our books is occupied. We are slow to believe that any lawyer's comprehension is much enlarged, or his taste much improved by reading the solemn decisions of the king's bench, that an indictment for fraudulently selling goat's hair is bad without a venue, and that charcoal is not firewood; or the still more solemn (because more contested) decisions of the highest tribunal of an ancient commonwealth, that a dead hog is a swine, and that three small boys may sleep in one bed.* It is not, we trust, a mere blind attachment to an honorable profession, which induces our belief that its members will rather seek and peruse with avidity the volumes that record the masterly discussions of constitutional and international law. Such are the volumes with which Mr Wheaton has furnished us.

It is not our purpose to analyze the book before us; nor will we enlarge upon the manner in which the reporter has executed the task which peculiarly belongs to him. This was cursorily done, in a notice of a former volume; and we have now only to add, that if he has not since indulged in the 'prodiga copia,' he has at least avoided the 'damnosa concinnitas,' which of old provoked the malediction of sir Harbottle Grimston. Our object rather is, to call the attention of the

* Cun. Rep. 94: Sayer 4: 15 Mass. Rep. 170. 205.

profession and of the public to the decisions of our national court, and to suggest a few of the reasons which influence our judgment concerning their paramount importance.

It is an unmanly squeamishness to pretend that the jurisprudence of the northern states is not in an unhopeful condition. Of the causes, which are different in different states, we have at present nothing to say. But this we affirm without hesitation or fear, that the prospects of legal science are, at this hour, worse in every state north of Pennsylvania, than they have been at a former period.* It is not to be disguised; and it is weakness, or something more pitiful, to affect ignorance or want of observation on this subject. There may be some boldness in the avowal, but there is little sagacity in the discovery. A moderate acquaintance with recent decisions will show that there has been of late a gradual departure from the old highway of the common law, a disposition to decide on principles (if they deserve the name of principles) of notional equity and imaginary convenience, rather than according to preestablished rules and legal conformity, to array a supposed common sense against immemorial usage, and to impute to legal learning the effect charged by the Roman governor upon the pupil of Gamaliel.

We are aware that there are compurgators about every tribunal, who are ready to attest the accuracy and profoundness of its judgments, and champions to defend by tongue and pen, and other devices, the resources and the infallibility of the forum to which they are attached. 'De'il ha'e Caleb Balderstone, if the family shall lose credit, if he were as mad as the seven wise masters.' We are equally aware that there ever have been and ever will be malecontents, who will attribute the loss of a cause to any misjudging but their own; who will alternately complain of expanded views as lax, and of strictness as narrow; whose heads are muddy from indigested learning, and whose tempers are soured by the disappointment of hopes which they never ought to have cherished. We dread the auspices of this latter class more than the resentment of the former.

From the 'radical' spirit, with which some of the state courts seem to be infected, the judges of the national court

* We would guard against an inference, *of any sort*, from our silence respecting the other states in the Union.

are wholly free; and we avow our sanguine hope, that their profound erudition, their encouragement of research, their commanding talents and influence, joined with their paramount authority, will yet recall the course of justice, in those states that have heretofore boasted of an enlightened judiciary, to its old and deep-worn channels. We hope the time will again come, when the most eminent counsel will not feel imperatively bound to carry to this court every cause of which it may have jurisdiction; or if they do, that it will not be, as now, because they have greater confidence in the soundness and stability of its faith, and its reverence for authority.

While, however, we deprecate wanton departures from the common law, we would disclaim that professional narrowness which discerns no difference between improvement and alteration. We require not to be told that the first fountains of this law were obscure and scanty, and that it has often been polluted in its progress,—that it has received additions from a thousand different sources, and by length of time worked itself into clearness, and flowed in an abundant stream to enrich and adorn the whole land of our fathers. Even at this day, we rejoice to see it swelled by the opening of new springs, and applied to the novel operations which the inventive genius of the age has devised. But we protest against obstructing or diverting its course, as we would against any other nuisance. Instead of inculcating forbearance, we would invoke the earliest and most summary redress. On this point we would adopt the sentiments of Burke. 'I am not of the opinion,' says he, 'of those gentlemen who are against disturbing the public repose. I like a clamor whenever there is an abuse. The fire-bell at midnight disturbs your sleep, but it keeps you from being burned in your bed. The hue and cry alarms the county, but it preserves all the property of the province.' Decorous animadversions upon judgments of doubtful accuracy are not to be reprehended. So long as they exhibit strong reasoning and sound learning, their effects must be salutary. The dernier resort is to the suffrages of an able and enlightened profession, whose voice no court can contemptuously disregard without furnishing irrefragable proof of its own incompetency or corruption.

Many considerations give weight and importance to the decisions of our national court. The sphere of their move-

ments, and the extensive territory from which they are selected, greatly diminish the probability that the law, under their administration, will partake of the complexion of the individual judges. In the state courts, it is almost impossible to avoid this evil. New judges are the pupils of their predecessors; have practised under their observation and guidance, and have imbibed their views. They are, in many instances, indebted to their associates for promotion, and must be expected of course to unite in their fraternity. This, it is most obvious, forms an obstacle to the correction of error, and gives no flattering promise of legal improvement. 'My law,' says the orator before quoted, 'should not depend upon the fluctuation of the closet or the complexion of men. Whether a black-haired or a fair-haired man presided in the court of king's bench, I would have the law the same; the same, whether he was born *in domo regnatrice*, and sucked from his infancy the milk of courts, or was nurtured in the rugged discipline of a popular opposition. This law of court cabal and of party, this *mens quædam nullo perturbata affectu*, this law of complexion ought not to be endured for a moment, in a country whose being depends upon the certainty, clearness, and stability of institutions.' This law, however, has sometimes made its appearance in our state courts; but to those courts it has hitherto been confined. The suggestions already made, and numberless others which will readily occur to the intelligent reader, sufficiently account for the fact, and furnish ground for apprehension, that the mischief will not be easily removed. It will be in these courts, if in any, that personal antipathies will exert their unhallowed influence, even on the judgment-seat. By the responses of these oracles, if of any, will political and religious cabals be inspirited to urge their factious and intolerant career. Under the sanction of these courts will private rights become the sport of popular clamor and legislative usurpation; and to the justices of the national court must the eloquent and effectual appeal again be made—*Nisi apud vos, nihil est præterea quo confugere possimus.*

The manner in which questions are argued and opinions delivered, in the supreme court of the United States, gives to their judgments an imposing authority. No case is allowed to pass without discussion; and the arguments, when made, are full and thorough. Counsel are not interrupted and

catechised like schoolboys, in order to impress on a vulgar audience a sense of the court's acumen, and its discipline of the bar. Where the most ancient books of the law are cited, the court do not sneer; nor do they stare in vacant wonder at the names of the last English reporters. In their consultations, they do not take for granted that their first impressions are correct, merely because they are unanimous, and therefore dispense with further examination; nor do they attempt to resolve all their doubts—*dum fingere nesciunt*—by looking into Espinasse's Digest and Blackstone with Christian's notes. In delivering their opinions on important points, they do not seek to foreclose future discussion of kindred topics, by an affectation of exhausting the subject and stating the whole law in a series of slovenly generalities, which they are afterwards compelled to retract or modify. They do not elude the pressure of authority by their mere lubricity, nor misstate and treat with *persiflage* and sarcasm, arguments which they cannot meet and answer. And though last, it is not, in our judgment, the least of these negative recommendations, that they never have occasion to conceal the soft and spongy texture of their reasoning, under the varnish of a puerile rhetoric.

We have always believed that the scoffings at our native literature, in which foreigners have so freely indulged, would be better met by producing works of unquestionable merit, than by braggart assertion and angry recrimination. Our countrymen were formerly called cowards. Bunker Hill and Saratoga more effectually refute the calumny, than the boastful defiance of half a century. In reply to the charge of semi-barbarism brought against our jurisprudence—instead of sneering at the wager of battle, so recently declared to be a part of the common law of England, we would exhibit the reports of Cranch and of Wheaton. When told that our judges are the creatures of the administration, instead of reviling the memory of Scroggs and Jeffries, we would point to the trials of Burr and of Smith and Ogden. If the competency of our judiciary should again be denied by British libellers, instead of a noisy altercation, we would produce our documents and readily submit the question to their own law-lords, whether any of his majesty's courts of law now display greater patience of research or depth of learning, a higher reach of

intellect or more profound ratiocination, than the supreme court of the United States. To the benchers of Lincoln's Inn we would as readily refer a decision upon the comparative erudition, talents, and eloquence of the bar. And if estoppels were not odious, we should incline to rely on the commendation of Mr Dallas's first reports, bestowed more than thirty years ago by lord Mansfield, and the recent opinion expressed by lord Stowell of the ability and learning of our national judges.

'There is scarce any object of curiosity more rational,' (says the author of 'An essay towards a history of the laws of England') 'than the origin, the progress, and the various revolutions of human laws. Political and military relations are, for the greater part, accounts of the ambition and violence of mankind; this is a history of their justice. And surely there cannot be a more pleasing speculation than to trace the advances of men, in an attempt to imitate the Supreme Ruler in one of the most glorious of his attributes, and to attend them in the exercise of a prerogative, which it wonderful to find entrusted to the management of so weak a being. In such an inquiry, we shall indeed frequently see great instances of this frailty; but at the same time we shall behold such noble efforts of wisdom and equity, as seem fully to justify the reasonableness of that extraordinary disposition, by which men, in one form or other, have been always put under the dominion of creatures like themselves. For what can be more instructive than to observe the first principles of RIGHT springing up, involved in superstition and polluted with violence; the laws sometimes lost and trodden down in the confusion of wars and tumults, and sometimes overruled by the hand of power; then victorious over tyranny—growing stronger, clearer, and more decisive by the violence they had suffered; enriched even by those foreign conquests which threatened their entire destruction; softened and mellowed by peace and religion; improved and exalted by commerce, by social intercouse, and that great opener of mind, ingenuous science?' If any thing can be more instructive, it is the peculiar history of American jurisprudence. There are great encouragements to search this history, and no lack of materials or help for the work. Whoever shall look deeply into this subject, will find, if we mistake not, that if the stream

has sometimes been irregular and turbid, it has not been from any commotion or impurity in the fountain. It will be found that among the first fathers of our country, the law was no narrow and inglorious study, that their jurists were imbued with its true principles, and deduced its spirit from original justice, and that in claiming magna charta as the charter of the American forests, their judgment was no less enlightened than their temper was resolute. It will be found that the sorry logic, the refuse of the schools, which so grossly disfigures the contemporary legal publications in England, never disgraced even the earliest of our judicial tribunals. Could he from whom we have cited the above interrogatory—he who forty-eight years ago portrayed, with unrivalled beauty, the growth and rising glory of our country—now sketch the progress of the laws brought by the pilgrims across the ocean and cherished as their birthright, stripped of their feudal character, attempered to the fundamental maxims of English liberty, now retrenched and now amplified by enactments, modified and adapted by common consent to the exigencies of their colonial state, he might furnish a lesson of admirable interest and instruction, and such as the first century and a half of no other people's history can exhibit. The state of the laws, during the war of the revolution, and the remaining years of the confederation, when displayed by a master of such comprehensive and philosophizing sagacity, would teach us that where the fierce spirit of liberty is duly chastened and regulated, there may be temporary anarchy without endangering future subordination: but the subject, on which all his exalted powers could find scope for their highest exercise, would be the modelling anew of the state constitutions, the consequent revision of the state laws, the adoption of a national compact predicated on an existing common law, binding all in one grand confederate government, the maturing by time and wisdom of this compound system, and the liquidation and adjustment of all the parts in a harmonious and consistent whole.

The power and duty of the national court to declare void and arrest the enforcement of legislative acts, which violate the constitution of the United States, though long and stoutly denied, are now most fully settled. It is, as was early said by Mr Justice Iredell, 'an authority of a delicate and awful nature;' but it necessarily results from the simple principles,

that the nature and ends of legislative power must limit its exercise; that the nature and terms of the constitution are the foundation of this power, and must determine its objects; that the will of the people declared in the constitution must control the will of the legislature declared in its statutes; and that the interpretation of the laws, fundamental and superstructive, is, in the last resort, the exclusive province of the judiciary: that legislative is a delegated authority; that all acts, contrary to the tenor of the warrant under which it is exercised, are void; and that neither the constituent nor the delegate is competent to decide ultimately on their validity. These principles seem not less valuable than clear. We have always believed that the sanctity of private rights and the stability of our public institutions essentially depend upon the firm and enlightened exercise, by the judiciary, of the power of deciding on the validity of the national and state enactments. The few years that comprise Mr Wheaton's reports have fully confirmed this belief. The judgments of the supreme court, within that period, on questions that regard state pretensions and legislative power, have greatly relieved the fears of the friends of our republican establishments concerning their permanency, and repressed the boding spirit which once so often warned the people that their federal government must eventually be prostrated in a conflict with the state authorities. On no subjects are the dignity and importance of the judiciary so manifest, and on none have the strength of their faculties and the sublimity of their fortitude been so illustriously displayed. Two of the authors of the Federalist have lived to see the doctrines respecting the extent and objects of the federal judicature, which were so clearly exhibited and ably defended in their incomparable writings, embodied as in a national creed, taught in our universities, made the text-book of our ripest scholars, cited as authoritative by our profoundest jurists, and carried into effect by the united efforts of all the coordinate branches of the government. Having received the highest earthly honors, and voluntarily retired, the one from the head of the judicial, the other from the executive department, they find the reward of their former labors and anxieties in the happiness and glory of their country. In their joyful retrospect, however, an intermittent shade of sadness must pass across their souls as they call to mind the chief contributor to

those writings, the coadjutor of those toils and partner of those anxieties, who was 'treacherously slain in the midst of his unfinished labors,' and denied the vision of those scenes, for which his patriotic spirit panted, and of the full maturity and effect of those principles which his matchless genius developed.

The class of questions, next in importance, which come before the federal courts, are those of admiralty jurisdiction. The history of that jurisdiction in this country is anomalous and interesting; but this is not the appropriate place to examine it. The authority of the courts, erected or empowered by the colonies, under a resolve of congress, in November, 1775, to determine concerning captures, and the appellate power reserved by that body; the jurisdiction of the court of appeals established by congress, under the articles of confederation, and the effect of the adoption of the constitution on causes then pending in those courts, would admit an ample and instructive discussion. A work, embracing these and their connate topics, is a desideratum; and we know no man who could accomplish it with greater facility or talent than Mr Wheaton. We will hazard a suggestion, that when he shall publish another edition of his valuable treatise on prize law, he will greatly enhance the obligations of the profession, by adding a historical sketch of the kind we have abovementioned. Let us not be supposed, however, to have overlooked his excellent notes on the prize jurisdiction and practice, appended to the two first volumes of his reports. There is no systematic treatise on the jurisdiction of the admiralty, in England, or here, that is accurate and thorough. True and lasting fame awaits the jurist who shall produce one.

Cases of admiralty jurisdiction are exclusively cognizable by the federal courts; yet it was not till five years after the constitution of the United States went into operation, that it was definitively settled that these courts possessed all the powers of a court of admiralty, whether considered as an instance or as a prize court. This, which now seems so plain, was not discerned by the district courts. We are indebted for this doctrine, and its application, to the wisdom and firmness of the supreme court. A short account of one branch of this doctrine may be pardoned. In the year 1793, a great number of French privateers were commissioned, armed, and equipped in our ports, under the sanction of the minister of

the French republic. They left port, as was officially said by Mr Jefferson, then secretary of state, 'to cruise on our coast, and to brave the authority of the country, by returning into port with their prizes.' Many libels were filed in the district courts, alleging that the ships, thus brought into our ports, were captured by these privateers, and claiming restitution to the owners. These libels were dismissed, in at least five districts, on the ground that the courts had no jurisdiction, but that matters of this kind appertained to the executive department. This renunciation of jurisdiction by the courts caused great embarrassment to the government. President Washington recommended that congress should regulate their jurisdiction, and expressed a hope, that if the executive was to be the resort in those cases, he should be authorized by law to have facts ascertained by the courts, when, for his own information, he should request it. Before congress had time to provide for the case, the question was brought in review before the supreme court of the United States (3 Dallas 6), who unanimously decided that the district courts had competent jurisdiction of all such cases, and remanded the cause to the court for the Maryland district, for a final decision. 'This,' says Mr Chancellor Kent, 'was one of the most salutary decisions ever made by that court. The anomaly raised in the district courts disappeared forever, and the course of public and national law flowed in its accustomed channel.'

As the prize court of admiralty decides according to the law of nations and the course of the admiralty, and the instance court, according to the civil law, the laws of Oleron and the customs of the admiralty modified by statute, it is obvious that this jurisdiction of the national courts brings into discussion questions on which mere common law counsellors must be silent. The admiralty system is a beautiful one, when well understood and administered, but it is extremely neglected by the students of the common law, of which it never has been a favorite. Our country is indebted to Mr Justice Story, *quem appellasse, laudasse est*, for his efforts to transfuse the prize law of Europe into our own, and for the great light which his researches have thrown on subjects of national and maritime law. Whatever may be thought of the justice, the policy, or the conduct of the war of 1812, it certainly is a splendid epoch in the history of our national jurisprudence;

and no one can read the opinions of the learned judge just named, without being convinced of the superior learning and more enlarged views, which are derived from an acquaintance with the admiralty civilians.

We deem it a scandal to the profession that the reports of the decisions of the federal courts have so limited circulation: and cannot but publish our astonishment, that they are to be found in so very few of the county law libraries in Massachusetts. Whether gentlemen covet the title of scholar, politician, or lawyer, we should expect them to be informed of the contents of those volumes. They will there find manly juridical eloquence and the ablest legal reasoning. It is on questions of national and constitutional law that the highest powers of the mind are exerted, and the noblest efforts of forensic genius demanded. The common topics of litigation neither require nor permit these efforts. *Crescit enim cum amplitudine rerum vis ingenii, nec quisquam claram et illustrem orationem efficere potest, nisi qui causam parem invenit.* We are here reminded of statesmen and orators, whose eloquence we shall hear no more. The reputation of men like Dexter and Pinkney should be brought forward on all occasions. Their country has an interest in it. The character of the former has been portrayed by Mr Justice Story, whose sketch is prefixed to the first volume of Mr Mason's reports. Mr Wheaton has thus delineated that of the latter in the volume before us:

'To extraordinary natural endowments, Mr Pinkney added deep and various knowledge in his profession. A long course of study and practice had familiarized his mind with the science of the law, in every department; and his attainments in the auxiliary branches of learning, essential to the jurist and advocate, were of the most profound and elegant character. For many years he was the acknowledged leader at the head of the bar of his native state; and during the last ten years of his life—the principal period of his attendance in this [the supreme] court [of the United States]—he enjoyed the reputation of having been rarely equalled, and perhaps never excelled, in eloquence and the power of reasoning upon legal subjects. His mind was acute and subtle; rapid in its conceptions, and singularly felicitous in the exposition of the truths it was employed in investigating. Mr Pinkney had the command of the greatest variety of the most beautiful and peculiarly appropriate diction, and the faculty of adorning and illustrating the driest and most intricate discussions.

His favorite mode of reasoning was from the analogies of the law; and while he delighted his auditory by his powers of amplification and rhetorical ornament, he instructed the court by tracing up the technical rules and positive institutions of jurisprudence to their historical source and first principles. He was profoundly versed in the ancient learning of the common law; its technical peculiarities and feudal origin, its subtle distinctions and artificial logic were familiar to his early studies, and enabled him to expound, with admirable force and perspicuity, the rules of real property. To this, and his other legal attainments, he superadded, at a later period of life, an extensive acquaintance with the theory and administration of public law.

'In the various questions of constitutional law, which have been recently discussed in this high tribunal, it may be said, it is hoped, without irreverence, that Mr Pinkney's learning and powers of investigation have very much contributed to enlighten and fix its judgments. In the discussion of that class of causes especially, which, to use his own expressions, "presented the proud spectacle of a peaceful judicial review of the conflicting sovereign claims of the government of the Union and of the particular states, by this more than Amphictyonic council," his arguments were characterized by a fervor, earnestness, gravity, eloquence, and force of reasoning, which convinced all who heard him, that he delivered his own sentiments as a statesman and a citizen, and was not merely solicitous to discharge his duty as an advocate. He exerted an intellectual vigor proportioned to the magnitude of the occasion. He saw in it "a pledge of the immortality of the Union—of a perpetuity of national strength and glory, increasing and brightening with age—of concord at home, and reputation abroad." And in his argument on the constitutionality of the charter of the bank of the United States, he stated, that "the considerations which the question involved, imparted to it a peculiar character of importance; and this tribunal, distinguished as it is for all that can give to judicature a title to reverence, is, in deliberating and adjudicating upon it, in the exercise of its most exalted, its most awful functions. The legislative faculties of the government of the Union, for the prosperity of the Union, are in the lists against the imputed sovereignty of a particular state: and you are the judges of the lists;—not indeed upon the romantic and chivalrous principles of tilts and tournaments, but upon the sacred principles of the constitution. In whatever direction you look, you cannot but perceive the solemnity, the majesty of such an occasion. In whatever quarter you approach the subject, you cannot but feel that it demands from you the firm and steady exertion of all

those high qualities which the universal voice ascribes to those, who have devoted themselves to the ministry of this holy sanctuary."

'That intense application to his professional and public labors, for which Mr Pinkney was so remarkably distinguished, continued to animate his exertions to the last moments of his life; and as he held up a high standard of excellence in this honorable career, he pursued it with unabated diligence and ardor, and still continued to speak as from the impulse of youthful ambition. His example was therefore of the greatest utility in exciting the emulation of the profession. But it is as an enlightened defender of the national constitution against the attacks which have been made upon it, under the pretext of asserting the claims of state sovereignty, that his loss is most to be lamented by the public. It is known to his friends that he was, a short time before his death, engaged in the investigations preparatory to making a great effort in the senate upon this interesting subject. The loss of such a commentary upon the constitution, by one who had so profoundly meditated its principles, may be regarded as a public calamity. It is also to be regretted that the great fame of his eloquence must rest mainly in tradition; as it is believed that no perfect memorials of his most splendid efforts in the senate or at the bar have been preserved, and it is obviously impossible to form any adequate notions of the powers of an advocate from the sketches of the arguments of council contained in the books of reports.'

Art. VII.—*An Introduction to the Critical Study and Knowledge of the Holy Scriptures; by Thomas Hartwell Horne, M. A. of St John's College, Cambridge, Curate of the united parishes of Christ Church, Newgate street, and Saint Leonard, Foster lane. Second edition.* London, 1821.

We are informed, in the preface to this work, which has already found a very considerable circulation among biblical scholars on this side of the Atlantic, that it is a selection from the labors of the most eminent biblical critics, both British and foreign, and is designed as a comprehensive *manual* of sacred literature. The plan of a work of this kind, one which might serve the biblical student as a general introduction to the holy scriptures, and afford those facilities, which every one would esteem desirable for solving the difficulties that might

come in his way and otherwise materially perplex his progress, was conceived by Mr Horne, as it seems, at a very early period, and occupied his exertions and studies for *twenty years* before its completion and publication in its present form. That our author found himself, in the commencement of his biblical studies, in want of a work of the kind which he has presented to the public, is not at all surprising, when it is remembered, how few books of standard merit on the subject of sacred literature, particularly on the criticism of the old testament, have made their appearance in English; and, as the want, which he experienced, has been felt by so many others, we trust he will receive the gratitude and thanks of all true friends of a thorough knowledge of the bible, for the attempt to remedy it, which he has so perseveringly, and laboriously, and, in many respects, successfully made.

The first of the four volumes, through which this work is extended, treats of the genuineness, authenticity, uncorrupted preservation, and inspiration of the holy scriptures. That the *Introduction* should begin with discussions of this kind seems to us perfectly proper; for it is clearly a matter of the first importance, that the student should know, whether the books, which are the objects of his attention, were written at the time assigned to them, and by the persons to whom they are ascribed, or not; whether the facts recorded in them are worthy of credit; whether the copies at present in use are true transcripts from the originals; and whether they exhibit any just claims to be considered as inspired. It is true, that some of the arguments, which are made to bear upon these points, imply a previous critical acquaintance with the books themselves; but then the difficulty only amounts to this, that the student is under the necessity of taking some things on the authority of others, with the fair expectation of soon being able, by means of his own investigations, to confirm them, if true, and to correct them, if erroneous. The first chapter, the subject of which is the *necessity of a divine revelation*, contains (although we would not be understood by making the remark, as approving, to the full extent, every assertion that is made in it) a striking exhibition of the weakness and evil tendencies of the human mind, when destitute of any supernatural illumination; and more especially of the miserable *morality*, if it may be called by that name, of such men as Hume and Bolingbroke,

Voltaire and Helvetius, when compared with the pure and exalted moral precepts of the scriptures. It is calculated to leave a deep and authoritative impression, that, without the bible, we should be left, even at this late period, in the grossest ignorance and the most deplorable error, on subjects of the highest concernment.

In the interesting remarks on the *genuineness* of the different books of the old testament, we could only wish, that Mr Horne had made the subject of the CANON of the old testament a more distinct and separate point of consideration, as it undoubtedly should have been, and had left it in a little less obscurity. It seemed to us important that the word *Canon* (Κανὼν) itself, which at different times has borne different significations, should have been more particularly defined; and when, on the forty eighth page of the volume under consideration, we are referred to the testimony of the Septuagint, of Philo, Josephus, Origen, Melito and others, we wish to understand precisely the bearing and the extent of their evidence, which are not altogether clear. If by the *Canon* Mr Horne means a collection of Jewish writings extant in the time of our Saviour, supposed to have been written by holy men of old, and regarded as of divine origin, the testimony of the authorities just mentioned, and of others, that Mr Horne brings forward, is good and to the purpose; but he will no doubt admit on a little reflection, that a book may be canonical and still not be genuine, may have belonged to the collection in question, and still not have been written by the person, to whom it is usually attributed. There is a distinction in the meaning of the words *genuine*, *authentic*, *canonical* and *inspired*, which, it is important, should be kept up in a professed introduction to the scriptures, unless we are expressly informed, that these words, in point of signification, are designedly confounded together. We see no objection to the general train of Mr Horne's argument in this part of his work, which appears to be, however, as he led us to expect in his preface, a compilation from other treatises. We consider it perfectly clear, that Moses must have been himself in the main, the author of the Pentateuch; and cannot feel ourselves at liberty to detract in the least from that faith, which we have exercised from childhood, in the worth and genuineness and authenticity of the scriptures, without refus-

ing to allow any weight to the greatest possible accumulation of moral evidence.

That Moses made use of certain written documents, which had been in existence previous to his time, in the composition, or, as we should rather be inclined to say, in the compilation of Genesis, and that there have been a few alterations made in respect to names, since his day, in a number of instances *interpolations*, and some *additions*, is all clear, and we should go in the face of the plainest evidence, if we should avow a disbelief of it; but in the view of every reflecting mind, of every person who makes any rightful pretensions to scholarship, circumstances of this kind would naturally enough be expected, certainly would not appear peculiarly strange, and would be very far, we trust, from shaking the firmness of his faith. We think it probable, that our opinions in respect to the origin of the book of Genesis may not be altogether in coincidence with those of Mr Horne, from what he has to say at page sixty third, of the first volume, in regard to the controversy on the subject, which was first brought into much notice by the publication of the physician *Astruc*, entitled, *Conjectures sur les Mémoires originaux dont il paroit que Moyse s'est servi pour composer le livre de la Genèse.* 8vo. Bruxelles, 1753. Astruc supposed that he was able to discover the traces of no less than twelve ancient documents, from which, not only the whole book of Genesis, but likewise the earlier chapters of Exodus were compiled; Eichhorn, on the contrary, reduces the number of them to *two*, distinghuishing one by the name of the אֱלֹהִים, the other by that of the יְהוָה document. Mr Horne remarks concerning the hypothesis of Eichhorn, which is adopted by Rosenmüller, and, in its essential features, by Jahn, that there is but one objection to it, which, however, he apprehends to be a fatal one; namely, the *total silence* of Moses, as to any documents having been consulted by him. But this objection, which appears so formidable in the eyes of our author, seems to us to possess but small weight; and as to what he afterwards observes, in regard to the *refinement* of Eichhorn's speculations, we are compelled to say, that the remarks of that writer are such, although perhaps not correct in every particular, as might be expected from a person, who was eminently qualified to detect and to estimate differences and coincidences in style,

and who, while he never wanted ability to contrive an hypothesis, rarely failed in bringing ingenious and powerful arguments in support of it.

After treating of the genuineness, authenticity, &c. of the old testament, Mr Horne proceeds to the consideration of those points in respect to the new; and in the latter half of the first volume, treats at great length, and with learning and ingenuity, of the *inspiration* of the scriptures. Such is the multiplicity of arguments made to bear upon this subject, and such the variety of considerations brought to view in connexion with it, that we are unable, consistently with our limits, to give a particular account of them, and must refer our readers to the book itself. Among other subjects which are introduced into the appendix of this volume, we find a short notice of the Apocryphal books of the old and new testament. This subject is again introduced in the fourth volume, and we have but a single remark to make in regard to it. Whatever may be thought of the Apocryphal books, considered as authority in matters of religion, and whether they be of greater or less use to people in general, the study of them is certainly a matter of no inconsiderable consequence to the professed biblical student. These books, (we have reference now to the Apocrypha of the old testament,) appear from the best information to have been chiefly written between the time of the captivity and the coming of Christ. We might be pardoned, therefore, in expecting to find in a work, which professedly treated of these productions, some account of the literary spirit of that period, of the connexion of the Hebrews with the Egyptians and Greeks, and of the influence of this connexion on the style and peculiarities of thought in the writings of which we are speaking. The history of that period is interesting in consequence of its connexion with the Apocrypha, and the Apocrypha is important in consequence of the light, which it communicates to the contemporaneous history; and when studied with a truly historical and literary spirit, it will be found to be none the less important in consideration of the aid, which it in many ways affords in the interpretation of the new testament. We are unable to say, that we have found any work as yet in English, on the history of the period between the Babylonish captivity and the advent of the Messiah, and on the religious, philosophical, and literary spirit of

the Apocryphal writings of that time, which has in all respects met our views and wishes.

The discussions in the first part of the second volume relate to the original languages of the bible, to the Hebrew and Greek manuscripts, to the editions of the old and new testaments, to the ancient and modern versions of the scriptures, to various readings, harmonies, &c. The second part of this volume is wholly occupied with a subject of no little interest and importance, viz. that of *interpretation.* We have already had occasion to express our sentiments in respect to this subject in our notice of the *translation of Ernesti* recently published; and we think we have ground for anticipating, both from that translation and from the discussions in the present work on the subject, that there will at length be a better understanding and more harmony in respect to the principles and rules of interpretation, and of course, as we conceive, a greater harmony in its results. We shall always welcome any thing which may have a tendency to lessen the ground of controversy between 'jarring sectaries,' and to relieve that volume, which always has been and no doubt will continue to be essentially connected with human happiness, from the misconstructions and perversions of men, who are either too ignorant to see its meaning, or too much bound by the strong chains of party feelings to their own particular sect, to acknowledge it.

We notice, that Mr Horne at the end of his account of the various Hebrew grammars, which is published in the appendix to the second volume, feels a difficulty, such has been the number of them, in deciding, which is to be adopted in preference to the others. Perhaps it may be attributed to our want of information, and perhaps to an undue prejudice in favor of any production from the pen of a countryman, but we must say, if Mr Horne feels a delicacy on the subject, that we are quite free in the present case from that refinement of feeling, and do not hesitate to express our opinion, that professor Stuart's Hebrew grammar is the best which has as yet appeared in English. We do not mean this remark, as any reflection on our author, who had probably not received professor Stuart's grammar, when the second edition of his work was put to press, and who will certainly do it justice at some future period. The great work of Gesenius, in German, undoubtedly stands at the head of

the six hundred publications, which are said to have appeared at various times on the subject of Hebrew grammar; but Mr Stuart has contrived to weave into his own work what was most valuable in Gesenius, and has made some improvements on the grammar of that eminent Hebraist.

The third volume of this work, which, as far as the subject matter of it is concerned, might, without any difficulty, have formed a separate publication, is occupied throughout, after first giving some account of the geography of Palestine, with what may be termed *biblical antiquities* or *biblical archæology.* The most perfect and thorough and interesting work on the subject of biblical archæology, with which we are acquainted, is the large work of *Jahn*, (whose name we have already had occasion to mention in this article,) written in German, in five large octavo volumes. It is of course inaccessible to the generality of English readers. The abridgment in Latin, a second edition of which was published at Vienna in 1814, under the following title, *Archæologia Biblica in Epitomen redacta a Johanne Jahn. Editio secunda emendata:* and of which a translation in English has lately been published in this country, is called by Mr Horne in his appendix to the third volume, *an elaborate compendium of biblical antiquities.* We will venture to say further, although it comes short, from the nature of the case, of the excellence of the original work, that, for extent and variety of learning, perspicuity of plan, and vividness and conciseness of statement, it is a book which is very rarely surpassed. It is to this book, if we are not very much mistaken, that Mr Horne is indebted more than to any other for the excellence of his third volume; and we have only to say, if this be the case, that we regret not to perceive any more liberal acknowledgments of this obligation.

The subject of biblical antiquities is one of prominent importance to the student in theology. If a person would be considered, as but ill prepared to enter into the full understanding and spirit of the Greek tragic poets, while perfectly ignorant of the institutions, manners, and customs of the Greeks—or of Horace, while equally limited in respect to his knowledge of the Romans, he must justly be considered, as being in no better a situation, to imbibe, to their full extent, the true meaning and spirit of the scriptures, while he

is unacquainted with the history, and arts, and occupations, and manners, and customs of the Jews. It is not, till we are possessed of such an acquaintance, till we are able in imagination to place ourselves by the banks of Jordan, or on the plains and deserts, where the Hebrew shepherds wandered, till we can summon around us the cedar-crowned hills, where warriors fought and poets loved to linger, with the circumstances of dress and manners and employments and feelings, it is not till we have some understanding of these things, that we are in a situation to follow the story of those warriors, or to be enraptured with the song of those bards. We learn from the preface, that Mr Horne's work is to be introduced as a text-book into certain American seminaries, viz. the college at Princeton, New Jersey, and the Protestant Episcopal seminary at New Haven. At these seminaries, the importance of an acquaintance with biblical antiquities is undoubtedly understood, and we have no hesitancy in saying, that the third volume of this introduction, (the one on which we are remarking,) will be found of essential assistance, and every way valuable. Among the multitude of subjects which naturally find their way into this volume, there are many, on which we might find it interesting and profitable to dwell, and to offer our remarks; but if we should once give way to the temptation, we might prolong our speculations beyond the patience of our readers; and we therefore proceed to a brief notice of the fourth volume.

We have bestowed very decided commendation on Mr Horne's work, and say now that it does him credit, even when it is remembered that twenty years of labor have been expended upon it; but truth obliges us to say, that in the fourth volume, especially in particular parts of it, there is a lamentable falling off. It was to this volume, which is an analysis of the old and new testaments, that we were naturally led to look for a very considerable share of interesting instruction, for the solution of many difficult questions, connected with the literary history, the grammatical structure, the style, &c. of the different books, of which they are made up. On the fourth page, Mr Horne assures us that nothing is more certain, than that Genesis was *written*, not compiled, or abridged, or altered, or sanctioned, but *written* by Moses. But can he have forgotten the reference which he made in the first vol-

ume to the theories of Astruc and Eichhorn, or have been ignorant of the fact, that the origin and authorship of Genesis are points, which for many years have called into exercise the controversial abilities of many eminent men on the continent of Europe; and of course, that a mere assertion on a point of that kind, without argument and proof, must and ought to go for nothing.

In our remarks on the second volume, which were necessarily concise, we took occasion to speak favorably of what Mr Horne had written on the subject of interpretation; although we at the same time recollected, that there were some things in his remarks, which under other circumstances we might have felt ourselves under the necessity of objecting to, and of controverting. We are led to make this remark in consequence of noticing the result of his principles of interpretation in the fourth volume, as far as types, the secondary or spiritual sense, &c. are concerned. We observe, that he makes Adam, Abel, Enoch, Melchizedek, Abraham, Isaac, Jacob, Joseph, Moses, Aaron, the paschal lamb, the manna, the rock in Horeb, the mercy seat, the tabernacle, the ordinance of the red heifer, the water that issued from the rock, the brazen serpent, the cities of refuge, Joshua, Jonah in the whale's belly, &c. types of the Messiah. Now we have not the least disposition to deny the existence of types in the old testament; but we think it is a subject, on which a cautious judgment should be exercised, and are glad to find the following remarks in the translation of Ernesti by professor Stuart, already alluded to. 'If it be asked, How far are we to consider the old testament as *typical?* I should answer without any hesitation; just so much of it is to be regarded as typical, as the new testament affirms to be so, and NO MORE. The fact, that any thing or event under the old testament dispensation, was designed to prefigure something under the new, can be known to us only by revelation; and, of course, all that is not designated by divine authority as *typical*, can never be made so by any authority less than that which guided the writers of the scriptures.' p. 13. If this rule, laid down by Mr Stuart, had been adopted by our author, and if the passages which he refers to in the new testament had been examined with a critical and judicious eye, we apprehend that the formidable number of prefigurations to which he introduces us, would

have been considerably diminished. In a book coming from so high authority we should no doubt be pardoned in expecting, in an account of the prophet Isaiah, some notice of the controversy in respect to the genuineness or authorship of the twenty-six last chapters commonly attributed to him. Nor should we probably be considered as exorbitant, if, in the account of the prophet Ezekiel and his writings, we should expect some development of the principles on which an explanation might be given of the sublime, but peculiar visions to be found in them. But, while we are compelled to say, that the articles on the particular books of the old testament are not in all respects such as they should be, and are but too little in advance of what we had already learned from Dr Gray's key, we must say at the same time, that those on the books of the new testament are of a somewhat different character, exhibit a more thorough acquaintance with the subject in hand, and will be found interesting and useful to the theological student. The cause of this difference in the articles is probably to be found in the difference of attention which in England has been bestowed upon the two testaments; the *new* having been made the subject of learned speculations and of much critical investigation, while the *old* testament has been comparatively neglected. The references in the articles on the new testament to such names as Lardner, Campbell, Kuinoël, Marsh, Michaelis, &c. naturally leave the impression, however the merit of them may be estimated, that our author has not in this instance labored under the disadvantage of a want of acquaintance with the writings of men of laborious research and admirable learning. Indeed there is an intrinsic difficulty in giving a literary and critical analysis of the books of the old testament,—arising from the characteristics of the languages and the remoteness of the periods, in which they were written, from our defective acquaintance (notwithstanding the able treatises that have been written on the subject) with biblical antiquities, from our very limited knowledge of the literature, customs, mythology, &c. of the nations that bordered on the ancient Jews, and from other causes,—which is not found to an equal extent in a like investigation of those of the new testament. On a subject that has often been written about, almost any one may write; on one that is plain and easy to be understood, where is the need of vigorous argument, and

profound investigation? It is on subjects where there are great and intrinsic difficulties, that we expect such a writer as as Mr Horne will show himself to advantage, by banishing misshapen hypotheses and substituting better ones, by discovering his acquaintance with the spirit of the age, whether more or less remote, by the suggestions, the arguments, the taste, and philosophy of a mind, powerful in itself, and instructed from the stores of ancient and modern learning. But we do not say any thing by way of complaint; the ablest and best informed minds may somtimes fail in some of their investigations, like Leibnitz, in consequence of their ambition of universal conquest. The references to be found in Mr Horne's work, of which we have already spoken, to such writers as Kuinoël, Koppe, Michaelis, and others, will justify us, we trust, in the remark which we are about to make, viz. that thorough-going biblical students have found it for their interest, and will continue to find it so, to consult those authors on the continent of Europe, who have written on subjects connected with the criticism of the bible. Of those writers, none have entered into that subject with more spirit and more success, as far as the mere literary part is concerned, than biblical critics of Germany.

The interest, with which Mr Horne's work has been received on this side of the Atlantic, is a proof, in addition to others, of the increasing zeal with which the studies, connected with the history, criticism, and interpretation of the bible, are pursued among us. We consider it a good omen, that a deep-felt interest in studies of this kind exists, and cannot but hope, that it will extend itself. The influence over the community, which in this country is exerted from the pulpit, is great; and we think that this influence will be favorable, and will have a tendency to correct the public morals, and elevate and purify the public sentiment, nearly in proportion (other circumstances being equal) to the intellectual endowments and acquisitions of those, who make their appearance as public religious teachers. But there is another point of view, in which the thorough study of the scriptures may be considered as important to all well-wishers to religion, and to all who take an interest in the prosperity of literature. It will encourage and keep alive among us an acquaintance with the treasures of oriental learning. The Hebrew language is inti-

mately connected, both as respects the meaning of particular words and its general structure, with the Syriac, Chaldee, Arabic, Ethiopic, and Samaritan; and we apprehend that, at the present day, a person is not in a condition to appear before the public, as a professed *critic* on the old testament, although he may have a generally correct understanding of it, without a respectable acquaintance with these dialects. This is the general feeling on the subject on this side of the water, and perhaps Mr Horne, with all his labor and all his learning, has given too evident indications that, with respect to an acquaintance with oriental learning, he has come to the difficult task of writing an *Introduction to the Old Testament*, with a less thorough preparation than might have been wished. But on this point we confess we are not in a situation to speak with certainty; and it is quite possible, that Mr Horne might have given us more decided proofs of his oriental learning, if the plan which he adopted in regard to his work had permitted, and if he could have done it without appearing to obtrude it unnecessarily upon our attention. A thorough acquaintance with the dialects which have been mentioned, not merely a slight initiation into them, seems to be necessary, not only in giving an account of the history and the merits of the translations, that have been made into them, but also in forming a critical estimate of the particular books of the old testament; since the elucidation of so many difficult passages depends on such an acquaintance, and a considerable portion of two of those books, Daniel and Ezra, is written, not in the Hebrew, but in the Chaldee. Probably the greatest defects in the translation of Isaiah by bishop Lowth, which is deservedly popular, arose either from his not possessing that thorough acquaintance with the dialects kindred to the Hebrew, which is usually possessed by distinguished biblical critics of the present day.

Art. VII.—*A few Notes on certain passages respecting the Law of Nations, contained in an article in the July number of the North American Review, upon the work entitled 'Europe, by a citizen of the United States.' By the author of that work.* Boston. 1823.

The object of this pamphlet, written by the author of Europe with his usual ability, is to maintain the correctness of certain statements and opinions advanced by him in that work, and questioned in our review of it. Our respect for his talents and learning, and the consciousness that, as our opinions carry with them no authority, it is so much the more incumbent on us to support them by reason, induce us to swerve so far from the usual practice of reviewers, as to reply to his arguments, and to state particularly the grounds of our dissent from them. If we may ever be allowed to do this, we owe it to the writer and to the subject to do it now; for there are few individuals to whom the North American Review and its readers are more indebted than to the author of Europe, and few topics more interesting in our diplomatic history than those on which we differ from him. The first is the construction of Jay's Treaty. That we may not do injustice to his remarks by misunderstanding them, we shall quote in connexion all that he says upon the subject.

'1. Of these, the one which appears to have been regarded as the most exceptionable, is contained in some remarks in the ninth chapter of the work, page 400, in which, after representing as an unwarrantable innovation on the law of nations, the claim made by Great Britain, in the year 1793, to treat provisions as an article contraband of war, I have added an expression of regret, *that this claim should have been sanctioned in a formal treaty by the government of the United States.* The reviewer, after quoting the passage, here alluded to, in the treaty with Great Britain negotiated by Mr Jay,* makes the following observations:

'* The passage in question forms a part of the sixteenth article of the treaty, and is as follows: "And whereas the difficulty of agreeing on the precise cases, in which alone provisions and other articles, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings, which might thence arise; it is further agreed, that whenever any such articles, so becoming contraband according to the existing law of nations, shall for that reason be seized, the same shall not be confiscated; but the owners thereof shall be speedily and completely

"We supposed that there was now but one opinion among enlightened men with regard to the merits of this treaty; and that, at the present day, it was admitted, as a whole, to have been equally honorable and beneficial to our country. It is obvious that the clause above cited does not warrant the reproach cast on it, *that it did not recognise any new rule of public law*, nor sanction any usurpation on the part of Great Britain, or relinquish any national right of the United States. Literally construed and fairly applied, it is unexceptionable; tending rather to mitigate, than increase the severity of the law of nations; and the only rational objection to its policy is, that in practice it admitted and indeed almost invited abuse, by enabling England more easily and with less danger of clamorous and immediate resistance, to interrupt even our lawful commerce with her enemy, upon her paying what her own courts should deem an adequate compensation for the injury."

'The meaning of the most important phrase in this passage, which is printed in italics, is rather ambiguous. The treaty plainly admits the existence of cases, in which provisions may become contraband by the established law of nations. In saying that it does not recognise any new rule of public law, the reviewer therefore conveys of necessity to his readers the idea that he does not consider the rule, which makes provisions contraband, as a new one. As all treaties must be interpreted by reference to the circumstances under which they were concluded, the cases provided for in the article must naturally be regarded as those, about which a difference had existed between the parties; and putting this construction on the treaty, the remark of the reviewer would amount to a recognition of the legality of the British claim, to its full extent. Afterwards, however, he uses the phrase, "lawful commerce," in apparent application to the trade in provisions, which was interrupted by the claim in question. I confess that I should regret very much to believe that so learned and patriotic a writer intended to vindicate publicly this most extraordinary pretension; and as his language will admit a different, although perhaps a less natural construction, I shall consider him, when he states that the clause in question does not recognise any new rule of public law, as meaning to be understood, that there are cases, in which, by the acknowledged law of nations, provisions become contraband; that the treaty merely provides for such cases, without admitting that the one, concerning which the dispute had arisen between the parties, was of the

indemnified; and the captors, or in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention."

number; and that it mitigates instead of increasing the severity of the existing law, by determining that provisions seized in these cases shall be paid for. This is the most plausible sense that can be drawn from the reviewer's language, and is probably the one which he intended to convey. But the passage, thus understood, is liable to two weighty objections.

'1. That there are any cases, in which provisions can be fairly treated as contraband, according to the existing law of nations, is, in my opinion, a wholly untenable position, and was uniformly denied by the American government up to the time of Mr Jay's treaty. The instance of a besieged town is not in point, because all intercourse with such a place is prohibited, upon a different principle from that which interdicts the trade in contraband articles. It has probably, however, arisen from a confusion of the two cases, that a few writers have given some countenance to the idea, that provisions might become contraband in certain junctures. The attempt of Great Britain to support, on such authorities, a pretension to interrupt the whole trade of the world in provisions with one of the greatest nations in Europe, can hardly be looked upon in any other light than as a piece of solemn mockery. It seems to be regarded in this way by Klüber, a late approved German writer on national law. "If," says he "the pretensions of belligerent powers respecting contraband articles were binding on neutrals, every thing would become contraband that was worth taking. Thus Great Britain, by her order of June 8, 1793, directed the seizure of all ships bound to France with provisions."* It may be remarked, that Martens, who was quoted at the time by lord Grenville, as giving countenance to the British claim, because he stated, that in some treaties provisions were made contraband in certain cases, afterwards expunged the passage relied upon by his lordship, which is not to be found in the third edition of the work, published at Göttingen last year, a short time before the author's death.†

'The principle that provisions may be treated as contraband, was positively denied by the American government. Mr Jefferson, then secretary of state, remarks in a letter to Mr Pinckney, our minister at London, written immediately after he had received the first intelligence of the order, that *the principle supposed is so manifestly contrary to the law of nations, that nothing more would seem necessary, than to observe that it is so.*‡ And in

'* See *Klüber, Droit des gens moderne de l'Europe*, § 288, *in Not.* Since the death of Martens, Klüber is perhaps the most distinguished living writer on public law.

'† Compare Martens, first edition, § 270, with third edition, §318.

'‡ See Wait's State Papers, vol. i. pp. 218 and 324; also 327, 408, and the following pages.

his answer to the letter of the British minister, Hammond, giving official notice of the order, he declares that the principle is *entirely new*. Mr Randolph, who about this time succeeded Mr Jefferson as secretary of state, took the same ground in his correspondence with Mr Hammond, and Mr Pinckney, in his intercourse with the British government. "*General Washington*," says Marshall, "*was resolved on no account to acquiesce in the idea, that provisions, though not generally contraband, might in certain cases become so.*"* The motives which induced him to break this resolution by ratifying the eighteenth article of Mr Jay's treaty, will be noticed hereafter.

'I conclude, therefore, that, on the reviewer's own construction of the article, it sanctioned a new and wholly inadmissible rule of public law, and one which up to that time had been uniformly treated as such by the American government.

'2. But a second and still more weighty objection to the reviewer's observation is, that the construction of the treaty, which he has adopted, or rather which I have attributed to him, as implied by the most candid interpretation which could be put upon his language, is not the true one. The article does not merely recognise the existence of certain undefined cases, in which provisions may become contraband, without admitting that the then present case was of the number, but *must be understood upon all the fair and ordinary principles of interpretation, as acknowledging the legality of the precise claim, which had just before been made by Great Britain, of a right to interdict the whole neutral trade with France in provisions*; a claim which had previously been pronounced by the American government, as it has been ever since by all good authorities, a monstrous offence against the rights of neutrals as well as common humanity, and which is now treated, as I have shown, by approved civilians, as quite ridiculous. That this claim was recognised by the article, is unfortunately but too certain.

'The reviewer will pardon me for observing, that a *literal* construction of state papers and public documents is rarely just, and never, perhaps, when it differs from a fair and liberal one. Such instruments, and, in particular, treaties, must be interpreted, on the contrary, as I have remarked above, by reference to the circumstances under which they were concluded, without a knowledge of which they are seldom even intelligible. In this case, as in others of the same description, the negotiators met together, not to compile a general code of national law, nor to provide for undefined cases, that might never occur, but to set-

'* See Marshall's Life of Washington, vol. v. p. 619.

tle certain important points in dispute between the two countries. One of these was the legality of the British order in council of June 8, 1793, directing the seizure of provisions bound to France, which was maintained by the British government, and denied by ours. Had the treaty contained no stipulations on the subject, we should have concluded that the point remained unsettled, and that neither party would consent to abandon its ground—as was the case in regard to several important questions at the negotiation of Ghent. Had it contained an article declaring that the trade in provisions could not be interdicted as contraband, we should of course have concluded that Great Britain had conceded the point, although the precise case of the recent claim had not been mentioned. When, on the contrary, we find an article declaring that provisions may, in certain cases, be treated as contraband—the full extent of the British claim when stated in general terms—and providing for these cases in the same way, and nearly in the same words, in which they are provided for by the order of June, it is just as obvious, that the intentions and effect of the article are to recognise the legality of this order, as if it had been quoted by its date, and formally confirmed.

'It is easy to illustrate the propriety or rather necessity of such a construction by supposing a parallel case. Let it be imagined, for an example, that the treaty of Ghent had contained an article conceived in the following terms: *Whereas the difficulty of agreeing upon the precise extent, to which, when one of the contracting parties is at war, and the other at peace, the naval officers of the belligerent party may exercise the right of entering the ships of the neutral, and carrying away wholly or in part the persons whom they find on board, renders it expedient to provide against the misunderstandings and inconveniences, which might thence arise; it is agreed that all such persons, so carried away, shall immediately be put on shore by such naval officer at the nearest port within the dominions of the belligerent party, and shall there be examined without delay by commissioners to be appointed for this purpose, and, if they are found to be the native citizens or subjects of the neutral power, shall be forthwith released and sent home at the expense of the belligerent, with reasonable compensation for detention and other damages.* Such an article would have stood in about the same relation to an undoubted principle of public law, in which the eighteenth article of Mr Jay's treaty stands to a very questionable one; and on the principle of literal interpretation, recommended by the reviewer, might have been defended as an improvement and mitigation of the existing system.* Had it been found in the treaty of

'* It might have been said, for example, that it is an acknowledged principle of public law, that the belligerent party may enter the ships of the neutral

Ghent, it would have been interpreted, as every article in every treaty must be, by reference to the circumstances under which it was agreed to, and would have been rejected with indignation by the government and people of the United States, as a sanction of the abuse of impressment.

'*The article, therefore, which I have been considering, undoubtedly admitted the legality of the British order.* Any article upon the subject would have amounted to a recognition of this pretension to the same extent to which it did not directly exclude it; and as this contains no provision in favor of neutrals, not to be found in the order, it amounts to a complete concession. The order had been revoked on the fourteenth of August, previously to the signature of the treaty. But it is rather a curious fact, and one which strongly confirms the propriety of the construction, which I have put upon the article, that after the signature of the treaty, and before its ratification, this obnoxious pretension was revived. It is evident enough from this, that both the negotiators considered the legality of the order, as admitted by the article, since the British government would hardly have thought it worth while to sign a treaty, which they intended to violate before it was ratified.

'I think myself therefore justified in repeating, that the treaty, upon the reviewer's own construction of it, *sanctioned a new and inadmissible rule of public law; and that, upon the only fair and natural construction of it, it recognised the legality of the British order of June* 8, 1793. Such an admission I thought and still think a legitimate subject of regret, with every friend of justice and humanity, and every citizen of the United States.

'In regretting the admission of this article into the treaty, I have not, however, cast any censure upon the administration, which negotiated it, nor have I expressed any disapprobation of the treaty, as a whole; although both the reviewer, and the author of the pamphlet (judging of the latter from the title) seem to charge me with so doing. A treaty may be excellent as a whole, and yet contain one or more unfortunate articles. In

and carry away all persons in the actual military or naval service of the enemy to be found there, that the article here supposed, as it only recognises acknowledged principles must be understood, *literally construed and fairly applied,* as simply confirming this right, and as not touching the doubtful question, whether the belligerent party has a right to carry away its own subjects, and that the subsequent provisions are consequently a mitigation of the existing law. This is the mode of reasoning adopted by the reviewer in regard to the eighteenth article of Mr Jay's treaty, and the argument is stronger in the case supposed, than in his, for the reason stated in the text. No candid man, however, can doubt that an article, like that supposed in the text, would have sanctioned the claim of impressment; *and it is equally evident that the eighteenth article sanctioned the legality of the order of June.*

fact, the gentlemen, who make this charge against me, appear to have overlooked or forgotten the facts—which, however, rest upon no more distant authority, than that of Marshall—that the particular article of Mr Jay's treaty, to which I have objected, was also at the time considered objectionable by the government; that the president was doubtful whether he should ratify it, and had apparently at one time made up his mind not to do so; that it probably would never have been ratified, but on the contrary expunged from the treaty, had not the ratification of the whole instrument, as it stood, been precipitated by accidental causes; and finally that the ratification was accompanied by a memorial in regard to this article, disavowing the principles recognised by it, and amounting in substance to a refusal to ratify it. These facts are either directly asserted by the chief justice, or follow in necessary conclusion from the tenor of his narrative, which is briefly thus:*

'"The president," he informs us, "after some hesitation and deliberation upon the subject of the treaty, had concluded to ratify the whole instrument as it stood, if it should be approved by the senate. But while it was under consideration in this body, intelligence was received of the renewal of the provision order, (mentioned above.) The president apprehended that this renewal might be construed and intended as a practical construction of that article in the treaty, which seems to favor the idea that provisions, though not generally contraband, may in certain cases become so—a construction in which he had determined not to acquiesce—and thought it wise in consequence to reconsider his decision."

'Now, as the article in question does not *seem to favor* the idea, but actually affirms, in so many words, that provisions, though not generally contraband, may in certain cases become so,† and must be understood on fair principles of construction, as admitting the legality of the British order, it is clear that the president, if, as we are informed by Marshall, he had determined not to acquiesce in this admission, must also have determined not to ratify this article of the treaty. At all events, he wholly rejected the principle, which the reviewer declares not to be a new rule of public law. The chief justice pursues his narrative as follows:

'"Of the result of this reconsideration there is no conclusive

'* See Marshall, as quoted above; and the following pages.

'† The phrase, which appears in the body of this article in a conditional form, when stated in that of a direct affirmation, is as follows: *Provisions and other articles not generally contraband, may in certain cases become so according to the existing law of nations.* It is not too much, I think, to say of this phrase, as Hamlet does of himself, that *it knows not seems.*

testimony. A strong memorial against this objectionable order was directed: and the propositions to withhold the ratifications of the treaty until the order should be repealed; to make the exchange of ratifications dependent upon that event; and to adhere to his original purpose of pursuing the advice of the senate, connecting with that measure the memorial which had been mentioned, as an act explanatory of the sense in which his ratification was made, were severally reviewed by him. In conformity with his practice of withholding his opinion on controverted points, until it should become necessary to decide them, he suspended his determination on these propositions until the memorial should be prepared and laid before him. In the mean time his private affairs required that he should visit Mount Vernon."

'The biographer then enters at considerable length into an account of the opposition to the treaty that displayed itself throughout the country; after which, he describes the circumstances under which the resolution to ratify was finally taken in the following manner:

'"In the afternoon of the 11th of August, the president arrived in Philadelphia; and on the next day the question respecting the immediate ratification of the treaty was brought before the cabinet. The secretary of state maintained singly the opinion that during the existence of the provision order, and during the war between Britain and France, this step ought not to be taken.

'"This opinion did not prevail. The resolution was adopted to ratify the treaty immediately, and to accompany the ratification with a strong memorial against the provision order, which should carry in explicit terms the sense of the American government on that subject. By this course the views of the executive were happily accomplished. The order was revoked and the ratifications of the treaty were exchanged. The president was most probably determined to adopt this course by the extreme intemperance with which the treaty was opposed, and the rapid progress which this violence was apparently making. It was obvious, that unless this temper could be checked, it would soon become so extensive, and would arrive at such a point of fury, as to threaten dangerous consequences. It was obviously necessary either to attempt a diminution of its action by rendering its exertions hopeless, and by giving to the treaty the weight of his character and influence, or to determine ultimately to yield to it. A species of necessity, therefore, seems to have been created for abandoning the idea, if it ever was taken up, of making the ratification of the treaty dependent on the ratification of the provision order."

'It does not appear that this memorial has ever been published, and we are of course unacquainted with its precise tenor.

The chief justice represents it as a remonstrance against the renewal of the order—describes the eighteenth article of the treaty as only *seeming to favor* a principle, which it really asserts in terms —and does not state expressly, that the government ever intended not to ratify the article. As we cannot, however, suppose that president Washington and his cabinet could be mistaken in the meaning of an English phrase, so short and simple as the one alluded to, it is more probable that they intended originally not to ratify the article; but that the ratification of the treaty as it stood, having become desirable on account of the circumstances related by the chief justice, they substituted for a refusal to ratify the article a memorial against its practical enforcement. However this may be, the order, as I have previously shown, was really authorized by a fair and natural construction of the eighteenth article, and a memorial against it was consequently in substance a disavowal of the article itself. In expressing my regret at the admission of this article into the treaty, I have therefore cast no censure whatever on the government, which certainly viewed it in the same light that I do. The reviewer, on the contrary, censures the government by implication, when he undertakes to justify a principle, which they considered so objectionable, that they refused in substance to ratify it, although from accidental causes it still retains its place in the treaty.'

It must here be observed, that the question between us is not whether this clause of the treaty be in any manner objectionable; for its liability to abuse is stated in the review, as one specific objection to it, and after reading this pamphlet, we readily admit as another, its liability to misconstruction. But did it sanction the first article of the British order in council of June, 1793, which authorized the capture of neutral vessels carrying corn, meal, or flour to any port in France? The affirmative is the position which is assumed in the work entitled Europe, and repeatedly and confidently reiterated in the pamphlet before us; and which we then ventured and still venture to deny.

The inference, that because the treaty admits the existence of cases, in which provisions may become contraband, therefore the reviewer, in saying that it does not recognise any new rule of public law, conveys of necessity the idea, that he does not consider the rule, which makes provisions contraband, as a new one, seems to us neither natural nor just. A rule, which in general terms should make provisions contraband, would indeed be a new one, and even more extravagant than

the British order in council; for thus unqualified, it must signify that they are commonly so. The difference between such a rule, and the admission that there are cases, in which provisions and other articles *not generally contraband*, may be regarded as such, is in our opinion sufficiently obvious to be perceived and acknowledged without any remarkable astuteness or candor. This last position is that assumed in the treaty, and it is still believed to be no new rule of public law, but as ancient as the law itself.

That there are any cases, in which provisions can fairly be considered as contraband, is deemed by this writer a wholly untenable position; and one which he thinks to have been uniformly denied by the American government up to the time of Mr Jay's treaty. He considers the instance of a besieged town not in point 'because all intercourse with such a place is prohibited upon a different principle from that which interdicts the trade in contraband articles.' Without stopping to inquire what this different principle can possibly be, it is enough to remark, that it is altogether immaterial to the present question, upon what principle neutrals are prohibited by the law of nations from carrying provisions and other articles to a blockaded port. If they are in fact so prohibited, such articles are in that case contraband. One cause of the difference of opinion between us and the learned author may be, our employing the same word with a slight difference of signification. The term contraband is sometimes used without qualification, and in its strictest sense, to denote the mere implements of war, which a neutral is entirely prohibited from carrying to any part of a belligerent country; and the assertion that provisions are not and cannot be contraband in this sense, is incontrovertible. This signification is expressly given it in Mr Jefferson's letter to Mr Pinckney of Sept. 7, 1793; where he defines contraband to mean mere implements of war, and in this sense it is obviously used by chief justice Marshall, when he says that Jay's treaty seemed to favor the idea, that provisions may in certain cases become contraband; and that the president was determined not to acquiesce in this construction of it. In its more general sense, however, the term includes every article which a neutral is under any circumstances forbidden by the law of nations from carrying to a belligerent port. This we take to be its true meaning in that clause of the treaty now

under consideration, and in this sense provisions and other articles not generally contraband, may in certain cases be regarded as such; especially when destined to ports actually blockaded. This position is abundantly supported by the following authorities.

Bynkershoek says 'Omnes res obsessis subvectæ habendæ sunt pro contrabandis.'*

Vattel, after defining contraband goods, adds 'Telles sont les armes, les munitions de guerre, les bois, et tout ce qui sert à la construction et à l'armement des vaisseaux de guerre, les chevaux, et les vivres mêmes en certaines occasions.'†

Valin, having remarked that Loccenius and the Danish law lay down the rule that provisions are prohibited as contraband, goes on to say; 'mais par nos loix et de droit commun elle n'a lieu en cette partie que par rapport aux places, assiégées ou bloquées;' and cites the Spanish commentator D'Abreu and L'Observateur Hollandois, as according with him in this opinion.‡

Pothier observes, 'a l'égard des munitions de bouche que des sujets des puissances neutres envoient à nos ennemis, elles ne sont point censées de contrabande ni par conséquent sujettes à confiscation, sauf dans un seul cas, qui est lorsqu' elles sont envoyées à une place assiégée ou bloquée.'‖

The French ordinance of 1794 contains this article, 'Sont compris sous le nom de marchandises prohibées ou de contrabande, les armes, instrumens et munitions de guerre quelles qu'elles soient, les chevaux et leurs équipages, et toute espèce d'effets, denrées ou marchandises destinées pour une place ennemie actuellement assiégée, bloquée ou investie.'§

Chief Justice Parsons, in the guarded and elaborate opinion of the court pronounced by him in the case of Richardson against the Maine Insurance Company, thus defines contraband goods.

'Goods contraband of war are of two descriptions:—munitions of war, the property of a neutral, bound from a neutral port to the territory of either of the belligerents, after the existence of the war is known:—and every species of neutral goods bound from a neutral port to a port belonging to either

*Quest. jur. pub. b. 3. c. 11. † Droit des gens. l. 3. c. 7. S. 112.
‡ Ord. de la Marine, b. 3. tit. 9. Art. 11. ‖ De Propriété. No. 104.
§ 3 Code des Prises, 217.

of the powers at war, and known to be blockaded by the other power. The principle therefore on which a belligerent will capture, and condemn as prize, the goods of a neutral, bound to a port known by him to be blockaded, arises from the consideration, *that all such goods are contraband of war*.'*

Judge Story, in delivering the opinion of the supreme court of the United States in the case of the Commercen, remarks, 'That by the modern law of nations, provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. If destined for the ordinary use of life in the enemy's country, they are not in general contraband; but it is otherwise if destined for military use. Hence if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband.'†

Mr Jefferson, secretary of state, in his letter of Sept. 22, 1793, to Mr Hammond, the British minister, relating to this order in council of June preceding, says, 'That all provisions are to be considered as contraband, in the case where the depriving an enemy of these supplies is one of the means intended to be employed; or in any case *but that of a place actually blockaded*, is a position entirely new.'‡

Mr Randolph, his successor, on the 1 May, 1794, addressed a long letter to the same minister on the same subject, containing the following passage. 'If by a circuit of construction, food can be *universally* ranked among military engines,—what article, to which human comfort of any kind can be traced, is not to be registered as contraband? *In some peculiar circumstances, it must be confessed, corn, meal, and flour are so;* as in a blockade, siege, or investment.'§

We cannot find, in Mr Jefferson's letters to Mr Pinckney and Mr Hammond, the remarks which this pamphlet professes to cite from them. In the former, he does not say '*The principle supposed*,' (meaning thereby, as the reader would imagine, the principle stated in the pamphlet as introductory to the quotation,) but '*This article*' (referring directly to the first article of the order in council of June, 1793) '*is so manifestly contrary to the law of nations, that nothing more would*

* 6 Mass. Rep. 114.
† 1 Wheat. Rep. 388.
‡ 1 Wait's State Pap. 324.
§ 1 Wait's State Pap. 419.

seem necessary than to observe that it is so.' The passage alluded to in his letter to Mr Hammond, as declaring that '*the principle is entirely new*,' is that which we have cited above. Our readers will now judge whether either of these expressions gives any countenance to the position, in support of which they are adduced; that provisions cannot in any case be fairly treated as contraband. The sentence printed a few lines below in italics, as from Marshall, is more correctly cited afterwards in connexion with its context.

It cannot be deemed unwarrantable to assert, in conformity with these authorities, that provisions, and other articles not generally contraband, become so when destined to ports blockaded, besieged, or invested. These are indeed the common cases, in which they become so; and by many writers are said to be the only ones. But there is very high authority for maintaining that there are others also; that naval stores may be treated as contraband if bound to a port of naval equipment; and provisions whenever they are destined to supply the fleet or army of one belligerent engaged in a hostile expedition against the other. The first ordinance of the American congress on this subject in the revolutionary war contains the following provision. 'All vessels to whomsoever belonging that shall be employed in carrying provisions or other necessaries to the British army or armies or navy, that now are, or shall hereafter be, within any of the united colonies, or any goods, wares, or merchandise for the use of such fleet or army, shall be liable to seizure, and with their cargoes shall be confiscated.'* In our last war, the supreme court of the United States decided that a neutral was not entitled to freight for goods destined to supply the British army, even on the continent of Europe, on the ground that this was prohibited by the law of nations. It should be stated however that there was a difference of opinion in the court as to carrying the rule to this extent.

The authorities above cited do not in any manner countenance the monstrous pretension set up by the British order in council of June, 1793, to interdict the trade in provisions with France; but they do show that it is not recognising any new rule of public law to admit that there are cases in which provisions and other articles, not generally contraband, may be

* 5 Wheat. Rep. Appendix 103.

deemed so; and further, that the cases of blockade, siege, or investment are such.

But is this the true construction of the treaty? Does it apply, as its terms plainly import, to cases in which provisions and other articles, not generally contraband, may be regarded as such, according to the existing law of nations? or must it be understood, as the author of Europe maintains, to acknowledge the legality of that flagrant violation of international law, the order of June, 1793? It is readily admitted, that a literal interpretation of public documents ought never to be preferred to a fair and liberal one. In construing a treaty we ought undoubtedly to affix to every expression the signification, which the parties intended to give it, at the time of making the compact; and the circumstances under which it was made may properly be considered, in order to ascertain that intention. But after all, the best evidence of their meaning is their language, which must receive its obvious and usual interpretation, unless it be manifest that the parties intended to give it a different sense. The writer himself informs us, that the order in council was repealed more than three months before the conclusion of the treaty; and of course it was not at that time a point in dispute between the two countries. And how, under any circumstances, could the mere fact, that the treaty contains a stipulation relating to the subject, warrant the conclusion, that it must be so interpreted as to amount either to an abandonment or a recognition of the whole British claim? It may have been the object of the parties to determine in what manner provisions and other articles, not generally contraband, should be dealt with in cases, when they should become so, without defining what those cases were; but leaving that question to be settled by the existing law of nations. This is the plain import of their language, and we cannot avoid the conviction, that it was at least the clear intent of the American negotiator, and known to be so by the British at the time; and in this case it was not competent for Great Britain to set up a different construction afterwards. The renewal of the order, indeed, after the signature and before the ratification of the treaty, looks like an attempt on her part to give it the construction contended for by this writer, sanctioning that order. But if it was so, it was a mere artifice, and an unsuccessful one; for the immediate remonstrance

of the American government against this renewal was a protest against that construction, and the consequent repeal of the order, by the British, an abandonment of it; which, in our opinion, destroys all pretext for reasserting it now. If, by calling the admission that provisions may in certain cases be treated as contraband the full extent of the British claim when stated in general terms, it is meant to assert that this general proposition does warrant the claim, set up by the order of 1793, to interdict the trade in provisions with France, this is the very question in controversy, and cannot be assumed. Admitting that there are such cases, is not of itself, surely, an admission that the situation, in which France then stood, was one of them. The letters of Mr Jefferson and Mr Randolph above cited, in which they allow provisions to be contraband in cases of actual blockade, siege, or investment, at the same time deny this claim of Great Britain; and they do not seem to us chargeable with any inconsistency in so doing.

The idea of illustrating this article of the treaty of 1794, by a parallel case, is ingeniously conceived, but not, we think, aptly executed. The stipulation imagined, does not expressly limit the belligerent's right of seizing persons on board the ships of the neutral to cases, in which this may be done according to the existing law of nations, but, on the contrary, supposes the seizure even of the citizens and subjects of the neutral power, by providing, that when seized they shall, on examination, be liberated, and directly authorizes, not only the seizure but the detention of all other persons, including of course the subjects of the belligerent and even of other neutral powers; all which is incompatible with the principles of public law; whereas the treaty of 1794 does not in terms authorize the seizure of provisions and other articles not generally contraband, excepting in cases, when by the existing law of nations they become so. The suggestion of this parallel, however, is so happy a thought, that we cannot refrain from pursuing it, and producing, in our turn, an article on the subject of impressment, resembling the provision of the treaty of 1794, so far as the present question is concerned, more nearly than that feigned by our learned friend; inasmuch as it does not omit, like that, the clause of express reference to the existing law of nations, the precise point on which the whole controversy turns.

'No seaman, seafaring or other person, shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel, belonging to the citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other party; and strict and effectual orders shall be given for the due observance of this engagement; but it is to be understood that *this article shall not exempt any person on board the ships of either of the parties, from being taken therefrom by the other party, in cases where they may be liable to be so taken, according to the laws of nations;* which liability, however, shall not be construed to extend in any case to seamen or seafaring persons, being actually part of the crew of the vessel, in which they may be, nor to persons of any description, passing from one port to another port of either of the parties.'*

What says the learned author to this article? That it would in any manner sanction the abuse of impressment? We know his answer. He is too well versed in our diplomatic history to be ignorant, that in the year 1804, when Great Britain not only claimed the right of impressment from American vessels, but was constantly enforcing the claim, when this was a subject, and the chief subject of controversy between the two countries, the American minister in London, Mr Monroe, was authorized to propose this very article to the British government; and that Mr Madison, secretary of state, in his letter inclosing it, says, 'You will observe, that this guards in all cases the crews of our vessels from being meddled with, and, in referring for an exception to the immunity on board our vessels to the law of nations, yields no principle maintained by the United States, *inasmuch as the reference will be satisfied by the acknowledged exception of enemies in military service.*'†

According to the reasoning of our author, was not this a mere subterfuge? Might it not have been said, if this article had been adopted, that it must be interpreted to sanction the whole pretension of the British? Should we not be told, 'that the negotiators met together, not to provide for undefined cases, but to settle important points in dispute between the two countries:—that one of these was the right of Great Britain to impress her subjects on board American vessels, which

* 5 Wait's State pap. 360. † 5 Wait's State pap. 368.

was maintained by the British government and denied by ours :—that when therefore we find an article admitting that persons may in certain cases be taken by the British from American ships, the full extent of the British claim when stated in general terms ; the effect of this article is to recognise the legality of impressment, as much as if it had been formally confirmed ;—that any article upon the subject would have amounted to a recognition of this pretension to the same extent to which it did not directly exclude it ; and as this excludes it only in two specified cases, it completely sanctions it in every other ?' So did not reason Mr Jefferson and his cabinet ; for assuredly they would never have proposed this article, had they dreamed that it would give the shadow of a sanction to the abuse of impressment.

The renewal of the order of 1793, after the signature and before the ratification of the treaty, does not make it evident to our apprehension that *both the negotiators* considered the legality of the order as admitted by the article. It may show that the British government wished to put this interpretation on it, but surely it does not prove that it was adopted by the American. On the contrary, when it appears that our government, on learning the renewal of this order, protested against it, and that the British then again repealed it, this is a plain assertion, on the one part, and admission on the other, that it was not sanctioned by the treaty.

The whole history of the events attending the ratification of the treaty, as cited from Marshall, confirms, instead of shaking our opinion. The interpretation, which would render the treaty a formal sanction, by the American government, of the order of 1793, seems to have no countenance in this narrative, but what it derives from a single expression misunderstood. We are informed that the president had concluded to ratify the whole instrument as it stood, but that, on receiving intelligence of the renewal of the provision order, he apprehended that this renewal might be construed and intended as a practical construction of that article in the treaty which seems to favor the idea, that provisions, though not generally contraband, may in certain cases become so, a construction, in which he had determined not to acquiesce, and thought it wise, in consequence, to reconsider his decision.

Is it not a mistake to suppose that the term contraband is

used in this sentence with the same broad signification as in the treaty? Is it not here used in its strictest sense, as embracing only munitions of war? And was not the idea that provisions might, in some cases, be regarded as munitions of war, and so their exportation to every part of a belligerent country be interdicted, that which the president deemed so inadmissible? We think these questions must be answered in the affirmative, because taking the term in its more general acceptation, as used in the passages cited above, it never could have been considered inadmissible, but had in fact been admitted both by Mr Jefferson, secretary of state, and by his successor, in their official correspondence on the subject; and because the only practical construction, which the renewal of the provision order could have a tendency to put upon the treaty, was one, by which that order should be sanctioned; and this must have been a different one from that, which Washington himself had put upon it, when he determined to ratify it as it stood.

We must suppose that Marshall understood the term not to bear in the treaty the same sense in which he used it, or else we must admit, as is alleged in this pamphlet, that he describes this article as only seeming to favor a principle, which it really asserts in terms; and also, that if the president had determined not to acquiesce in this construction, he could not have determined to ratify the treaty as it stood; the two propositions being inconsistent. Yet does the historian positively and explicitly assert them both, in immediate connexion with each other. When it was perceived by this ingenious writer, that the necessary consequence of *his* construction of the treaty was, to make it appear that Chief Justice Marshall had so far mistaken the meaning of a short and simple English phrase, as to declare that it only seemed to favor the idea of a proposition, which it actually affirmed in so many words, and had involved himself in a direct contradiction, all in the short compass of two sentences, did it not suggest itself to his imagination, that perhaps that construction might be erroneous?

Nor is this the worst. Adopting this construction of the treaty, supposing that it formally sanctioned the order of 1793, we should be compelled to think Washington and his cabinet no less inconsistent than the historian. It was the renewal of that order, which induced him to reconsider his decision, and which

changed the opinion of the secretary of state; for Marshall states that before the account of this renewal the secretary was in favor of ratifying the treaty, though afterwards opposed to it. Now why consider the renewal of the provision order any objection to the treaty; why apprehend that it might be intended to put a practical construction, deemed inadmissible, on the eighteenth article; if this article would in truth and fairness bear but one construction, and that recognising the legality of the order? Why entertain the proposition to make the repeal of the order the preliminary or the condition of ratifying a treaty, by which that order was to be formally sanctioned? Why prepare a memorial as an act explanatory of the sense, in which the ratification of the treaty was made, if the only sense, which could fairly and naturally be put on it, was a confirmation of the whole pretension of the British?

If the American government, being willing on the whole to ratify the treaty as it stood, but fearing that an erroneous construction might be put upon it, and one in which they were determined not to acquiesce, accompanied their ratification of it with a memorial, setting forth what they considered to be its true meaning, in order to prevent any subsequent misunderstanding, this was a candid and dignified precaution. But any attempt to avoid the effect of ratifying the treaty by a secret memorial disavowing its only fair and natural construction would, in our opinion, have been altogether unworthy of the president and the nation; at once unmanly and unavailing. We cannot therefore admit the assertion to be correct, '*that the memorial against the provision order was in substance a disavowal of the eighteenth article of the treaty, and a refusal to ratify it, although from accidental causes, it retains its place in the treaty.*' But if it be so, and that article was not in fact ratified, then there is the less reason for the friend of justice and humanity to regret that the provision order was sanctioned by the American government in this treaty; since it assuredly contains no other article, which can possibly be interpreted into such a sanction.

The next subject, on which we have the misfortune to differ from this accomplished writer, is thus commented on in these Notes.

'II. The next passage in the review, which I propose to notice, is the following:—"The position, taken in this work, that it

was an unwarrantable pretension of England to hold, that enemy's property on board of neutral ships is good prize, cannot be maintained. This is the settled law of nations, and is uniformly enforced by the United States."

'It may be sufficient to observe, in answer to this passage, that no such position, as the one alluded to, is taken in the work. I stated, on the contrary, expressly, that "according to the maritime code of public law, the right of plundering the private property of enemies may be exercised upon such property in the hands of third persons," p. 399; in other words, that enemy's property on board of neutral ships is good prize. Without attempting to balance authorities on the subject, I have stated this to be the principle now in force, on the simple ground that it is the British construction, and that the construction of national law adopted by the dominant powers by sea and land must always be regarded for the time being as the only valid one. I have represented this principle as unreasonable and inhuman, but still as a part of the existing law, as the reviewer may easily satisfy himself, if he will take the trouble of reading over the chapter.

'But although I have considered the British doctrine as a part of the existing system of public law on the ground that this law is a thing rather of fact than right, and determined for the time being, by the practice of the dominant powers by sea and land, I cannot quite agree with the learned critic in regarding it as the *settled* law of nations, or in thinking that it is uniformly enforced by the United States.

'There is in fact no question in public law upon which authorities of all kinds are more at variance. The *Consolato del Mare*, an anonymous work on maritime law, compiled at the epoch of the crusades, but still occasionally quoted in the prize courts, recognises this principle. It was also confirmed by most of the treaties concluded previously to the middle of the seventeenth century. At that time it may perhaps have been fairly considered as *settled*. On the other hand, most of the treaties since concluded, establish the contrary doctrine. During the American war, the latter was formally agreed to by the United States, and by all the powers of Europe excepting Great Britain; and, soon after the close of that war, Great Britain herself recognised it in her commercial treaty with France. If then we admit, with the reviewer, that nations may alter the established law by consent and treaty, I do not see how it can be easily denied that the doctrine of *free ships, free goods*, had become, in its turn, a settled principle previously to the war of the French revolution. Unless too we admit that a single nation can make and unmake the law at pleasure, I see not how the subsequent refusal of Great

Britain to acknowledge the modern principle, in which she has not been followed by the other powers, can be regarded as re-establishing the old law. On grounds of *right*, therefore, I conceive that the weight of authority is in favor of the modern principle; and it is only because I have treated the whole system of public law as existing in *fact* rather than of *right*, that I have been led to represent the antiquated principle as the one now in force.

'That this principle has been uniformly enforced by the United States, is also, in my opinion, a very hazardous assertion. That it has *ever* been enforced by them is a fact of which I was before ignorant; but I willingly take for granted, that the reviewer has some authority for this statement. *It was certainly however not enforced in the revolutionary war.* Mr Pinckney observes in his note to lord Grenville of July 22, 1793, "In the last war, the Americans adopted and carried into effect the principle of *free ships, free goods*, to the advantage of British subjects, having actually liberated several British cargoes captured on board of neutral vessels."* Nor has the ancient doctrine been uniformly maintained in theory by our government. On the contrary, the modern principle was confirmed by all their treaties previous to Mr Jay's:† and it was one of the valid objections to this treaty that it sanctioned the attempt of Great Britain to restore, from motives of mere rapacity, the principle which she herself and every other christian power had just before agreed to alter. I know of no other treaty ever concluded by the United States, in which the antiquated doctrine is revived. A few *dicta* that favor it may be found in the correspondence of some of the persons employed in the government, about the time when Mr Jay's treaty was concluded, particularly in that of Mr Pickering. Taking the state papers through, a far greater number will be found on the other side. The conclusion from the whole is, that the American government, instead of having uniformly enforced the ancient doctrine, *have, on the contrary, uniformly enforced and maintained the modern one, excepting in a single case* when a different policy was enjoined upon them by strong reasons of state.'

* See the State papers, as quoted above.

† The treaties with France, Holland, Prussia, and Sweden expressly stipulate the principle that free ships make free goods. Mr Jay's treaty with England, which is the next in order, admits the contrary one. The former, however, appears again in the treaty with Spain concluded the next year, in the new treaty of 1800 with France, and in the late treaty with Sweden. In the new treaty with Prussia, negotiated by the present secretary of state, the article was not revived, but the whole subject was referred to a future negotiation, with an evident inclination however to the modern principle, and these are all the treaties, I believe, in which this matter is mentioned; and if we consider the second treaty with Prussia as doubtful, there are seven authorities for the modern construction, and one only for the ancient.

We are mistaken, it seems, in supposing this writer to maintain that it was an unwarrantable pretension of England, to hold that enemy's property on board of neutral ships is good prize. As an apology for this mistake, we would observe; that his repeatedly styling this claim a pretension of Great Britain, conveyed to us the impression that he thought it only a pretension, and not her clear right. The account given by him, in these very Notes, of the course of his reasoning in his work on Europe is as follows: 'After expressing my unqualified disapprobation of the rule of 1756, and stating that the government entertained the same opinion of it, I observe that from motives of moderation and policy they had declined asserting, by violent measures, the full extent of their rights as a neutral power, but had acquiesced in such belligerent pretensions, as did not violate too directly the national honor and independence, giving as examples of this sort the rule of 1756, and the claim to seize enemy's property on board of neutral ships.' This appears, even now, to be a pretty plain intimation that he considers the claim as violating in some sort, if not too directly, the national honor and independence, and as worthy to be ranked in this respect with the rule of 1756. We consider it however no violation of our national honor or independence at all, but a settled principle of the law of nations, and one which the United States uniformly enforce as such. The language of these Notes is so perfectly explicit, that we cannot again be mistaken in supposing the writer to say that he was ignorant of the fact that this principle had *ever* been enforced by the United States—and that it was certainly not enforced in the revolutionary war—and, to conclude, that on the contrary, the United States have uniformly enforced and maintained a different doctrine, excepting in a single case.

Our assertion, that this principle of the law of nations is uniformly enforced by the United States, was not and did not profess to be founded on the treaty of 1794; nor is the circumstance that several of our treaties contain a different provision any evidence against it. For though treaties often contain articles merely declaratory, this is not their only nor even their principal object, and therefore the insertion of any provision in a treaty is not of itself proof that the contracting parties deem it a part of the existing law of nations. It may

be merely the rule, by which they agree to regulate their intercourse with each other. This is still more apparent in the present case, from the consideration that the United States have, by different treaties, made different stipulations in relation to this subject. The treaty with Great Britain of 1794 declares the goods of enemies on board of neutral ships to be lawful prize. Our treaties with France, Sweden, and Holland stipulate that free ships shall make free goods, and that hostile ships shall make hostile goods; in effect that the character of the ship shall in all cases determine that of the cargo. The treaty with Prussia of 1785, and that with Spain of 1795, provide simply that free ships shall make free goods, without establishing the converse, thus leaving neutral property on board an enemy's ship exempt from capture. The treaty with Prussia of 1799 contains the following article:

'Art. 12. Experience having proved that the principle adopted in the 12th article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree either separately between themselves, or jointly with other powers alike interested, to concert with the great maritime powers of Europe such arrangements and such permanent principles, as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war, to which the other should remain neutral, the ships of war and privateers of the belligerent power shall conduct themselves towards the merchant vessels of the neutral power, as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations as generally acknowledged.'

Admitting this article to show an evident inclination to establish the rule that free ships make free goods; it exhibits at the same time, we think, an evident opinion that it was not already established, either by common practice, or by general acknowledgment. In the treaty with Spain of 1819, it is agreed, that 'if either of the two contracting parties shall be at war with a third party and the other neutral, the flag of the neutral shall cover the property of enemies whose government

acknowledge this principle, and not of others :'—a limitation sufficiently indicating that our government do not consider this principle to be a part of the law of nations, and as such universally binding.

In order then to determine what is the principle of public law enforced by the United States, we must inquire, not what stipulations are contained in their treaties, for these are various, but what is the rule applied by them to those nations, with whom they have made no stipulation on the subject, and towards whom therefore they are bound to conduct themselves according to the established law of nations. They uniformly condemn the goods of enemies found in neutral ships. We speak of their present practice, not of their past history. But the same rule was enforced during the greater part of the revolutionary war, and Mr Pinckney, in his note to Lord Grenville, did not mean to say the contrary. The well known fact, to which he alludes, is the publication of instructions to captains of armed vessels by Congress on the 7th of April, 1781, prohibiting them from capturing enemies' goods on board neutral ships. These instructions were prepared in consequence of a secret vote of Congress adopting the principles of the armed neutrality, and remained in force till the close of the war. But the ordinance previously existing, and which they in effect repealed, authorized the capture of all vessels, goods, wares, and merchandises, belonging to the crown of Great Britain or its subjects, and such property found on board of neutral ships had always been condemned. The short interval between the publication of those instructions and the termination of hostilities, is the only period in which the rule, that free ships make free goods, was ever adopted as law by the United States. Since that time, in all cases not otherwise provided for by express compact, the rule, that the goods of enemies found on board neutral ships are good prize, has been, and it still is, uniformly enforced by them.

The passages in the state papers, showing that the United States maintain this rule to be a principle of the law of nations, are too much disparaged, when they are spoken of as 'a few *dicta* favoring it in the correspondence of some of the persons employed in the government.' In July, 1793, the French minister, M. Genet, addressed an official communication to Mr Jefferson, secretary of state, informing him that the proper-

ty of French citizens had been captured by the British on board merchant vessels of the United States, in violation of the principle that friendly vessels make friendly goods, and demanding that the government should assert its neutrality and require the property to be restored. The government refused to interfere, as appears by Mr Jefferson's answer of the 24th of July, the whole object of which is to justify this refusal. '*I believe*,' says he, '*it cannot be doubted* but that, by the general law of nations, the goods of a friend found in the vessel of an enemy are free, and the goods of an enemy found in the vessel of a friend are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels, and I confess *I should be at a loss on what principle to reclaim it.* It is true, that sundry nations desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port, and detained, under pretence of having enemies' goods on board, have in many instances introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controlling in special cases the general principle of the law of nations, and therefore taking effect between such nations only as have agreed so to control it.'*

The letter of the same secretary to the American minister at Paris, on the 16th August following, is written with the greatest care, being intended as an official vindication of the conduct of the government towards M. Genet, and has been considered a model in diplomacy. It contains a formal argument in favor of the same position.

'5. Another source of complaint with M. Genet has been, that the English take French goods out of American vessels, which, he says, is against the law of nations, and ought to be prevented by us. On the contrary we suppose it to have been long *an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend.*' And speaking of the stipulation, that free ships make free goods,

* 1 Wait's State pap. 110.

and enemy ships enemy goods, he adds, 'As far as it has been introduced it depends on the treaties stipulating it, and forms exceptions, in special cases, to the general operation of the law of nations.'*

We suspect the assertion, that, taking the state papers through, a far greater number of passages will be found on the other side, to have been made inadvertently; at least it has not been our fortune to find them. Mr Madison, in his instructions to our ministers in London, dated May 17, 1806, says, that '*the United States have not asserted the principle, that a neutral flag covers the property of an enemy, as the established law of nations, but they have ever been anxious to see it made a part of that law.*'†

In the celebrated case of the Nereid, decided in 1815, the opinion of the supreme court of the U. S., delivered by Chief Justice Marshall, contains the following passages. 'The rule, that the goods of an enemy found in the vessel of a friend, are prize of war, and that the goods of a friend, found in the vessel of an enemy, are to be restored, is believed to be a part of the original law of nations, as generally, perhaps universally acknowledged. Certainly it has been fully and unequivocally recognised by the United States. This rule is founded on the simple and intelligible principle, that war gives a full right to capture the goods of an enemy, but gives no right to capture the goods of a friend.'—'The character of the property, taken separately and distinctly from all other considerations, depends in no degree upon the character of the vehicle in which it is found.'—'The celebrated compact, called the armed neutrality, attempted to effect by force a great revolution in the law of nations. This attempt failed, but it made a deep and lasting impression on public sentiment.'—'From that epoch to the present, in the various treaties which have been formed, some contain no article on the subject, and consequently leave the ancient rule in full force. Some stipulate that the character of the cargo shall depend upon the flag, some that the neutral flag shall protect the goods of an enemy, some that the goods of a neutral in the vessel of an enemy shall be prize of war; and some that the goods of an enemy in a neutral bottom shall be safe, and that friendly goods in the bottom of an enemy shall also be safe.'—'The United

* 1 Wait's State pap. 123. † 5 Wait's State pap. 455.

States have in some treaties stipulated for both principles, in some for one of them only, in some that neutral bottoms shall make neutral goods, and that friendly goods shall be safe in the bottom of an enemy.'*

The practice of the United States accords with their theory. In their late war with Great Britain, they invariably captured and condemned British property found on board of neutral ships, when not protected by some express treaty. If this is not *enforcing* the principle, we would fain learn what would be.

If we thought with this author, that the doctrine of free ships free goods had become a settled principle of public law previously to the war of the French revolution, and that Great Britain had subsequently refused to acknowledge it, and not been followed in this refusal by the other powers, we should readily accede to the conclusion that, of *right*, this is still the law; and we should venture to add, in *fact* also. But a brief reference to the history of this celebrated maxim will probably satisfy our readers that the premises of the argument are erroneous. The writer frankly admits, that the opposite rule was the settled law of nations in the middle of the seventeenth century. We were not aware that it was contained in most of the treaties concluded before that time; but supposed it to have been deduced from the general principles regulating the rights of belligerents, and established by custom rather than by express treaty. However this may be, if it was then the settled law, it must be deemed so now, unless it be proved that it has since been changed by the common consent or general practice of nations.

The first systematic effort to introduce the rule, that free ships make free goods, into the treaties of Europe, was made in the middle of the seventeenth century by the Dutch, who connected with it the rule that hostile ships make hostile goods; their doctrine being, in effect, that the character of the vessel should in all cases determine that of the cargo, and their apparent motive, to secure to themselves the carrying trade of the world; for they were then at the height of their prosperity, and their policy was essentially neutral. This was the doctrine so often inserted afterwards in commercial treaties until the year 1780. The two maxims were connected

* 9 Cranch Rep. 418 to 421.

in substance though not always in form, and were represented, we say not how justly, as equivalents for each other, a sort of compromise between neutral and belligerent rights. In 1780 the empress of Russia published a declaration setting forth what she claimed to be the rights of neutrality, the most conspicuous of which was the rule of free ships free goods, and inviting the belligerents to recognise, and the neutral powers to join with her in forcibly maintaining them during the existing war. In the same year, Sweden and Denmark, although the ancient treaties between both those nations and Great Britain, then in force, contained the opposite rule, accepted her invitation, and formed with her the celebrated coalition, called the armed neutrality; to which, in the following years and before the peace of 1783, Holland, Prussia, Austria, Portugal, and the Sicilies acceded.

The treaties, establishing this coalition, separated the maxims previously united, and declared that free ships make free goods, without admitting the converse, that hostile ships make hostile goods. Of the belligerents, France answered, that her existing ordinance established the rule of free ships free goods, and that it should be enforced; Spain, that she admitted the correctness of the principle, and would enforce it if England would; and England, refusing to accede to it, declared she would maintain the existing law of nations. The congress of the United States passed a vote, complimenting the empress, and adopting her principles, and appointed a minister to Russia with instructions to offer to establish them by treaty, either with the coalition generally, or with Russia or any other member of it, sagaciously considering that the acceptance of their offer would be a recognition of their independence. But the empress did not receive this minister. Many of the commercial treaties concluded between the end of the war in 1783, to which time the armed neutrality was expressly limited, and the war of the French revolution, stipulated for the observance either of the single rule maintained by that coalition, or the more ancient double maxim of free ships free goods, and hostile ships hostile goods. It was the latter which was contained in the treaty between England and France of 1786. Russia, the founder and champion of the armed neutrality, inserted in some of her treaties the one maxim, and in some the other. But it must not be imagined that any European

nation made either of these stipulations with all others, nor that every one made any stipulation on the subject.

Hardly did the war of 1793 afford an opportunity for putting in practice these maxims in favor of neutrals, which had become so popular in theory, when they seem to have been generally abandoned. 'Russia,' says Martens, 'made common cause with Great Britain and with Prussia, to induce Denmark and Sweden to renounce all intercourse with France, and especially to prohibit their carrying goods to that country. The incompatibility of this pretension with the principles established by Russia in 1780, was veiled by the pretext that in a war like that against revolutionary France, the rights of neutrality did not come in question.'* France on her part ordered the capture and condemnation of the goods of her enemies found on board neutral vessels, without excepting the vessels of those states, with whom she had stipulated to observe a different rule. Denmark and Sweden declared themselves neutral, and entered into a convention to maintain their rights as such, according to existing treaties, and the established law of nations; without intimating in it what they deemed that law to be in relation to this important subject. But the Danish proclamation of 1793 declares, that the principles of neutrality do not permit any neutral vessel to have on board articles, which belong to the states at war or their subjects.† The United States, as we have seen, on the application of France, formally refused to assert the right of sheltering her property under their flag from capture by the British. The article cited above from our treaty with Prussia, in 1799, sufficiently shows how little the principle of free ships free goods was regarded up to that time, either in the existing or in the two preceding wars.

In the year 1801, Russia attempted to reestablish this doctrine, and for that purpose entered into a coalition with Denmark, Sweden, and Prussia, in the same form and on the same principles as that of 1780. But England, considering this an act of hostility, attacked Copenhagen, and compelled Denmark to suspend a compliance with her engagements, and was proceeding to act against the other powers, when the emperor Paul was assassinated, and Alexander, immediately on ascending the throne, declared his willingness

* 2 Sup. au Rec. 345. † 5 Wheaton's Rep. App. 75.

to enter into negotiation with Great Britain. The result of this negotiation was the celebrated treaty between the two powers of June, 1801, expressly asserting the principle that the goods of enemies on board of neutral ships are lawful prize; to which treaty Denmark and Sweden soon afterwards formally acceded. We are not aware that the advocates of the doctrine of free ships free goods, imagine that any event subsequent to this period has rendered it part of the law of nations.

The several treaties, by which the coalition of 1780 and both the coalitions of 1801 were established, professed to be merely declaratory of the existing law. But even such treaties bind only the parties to them; and those which simply lay down a rule for the conduct of the parties towards each other, do not bind either of them to apply that rule to other nations. That most of the European treaties, which have provided that free ships should make free goods, whether accompanied by the converse or not, were intended in this respect to regulate the mutual intercouse of the parties, and not to be declaratory of the public law, is obvious from the circumstance, that the parties themselves at the same time enforced the opposite rule against those nations, with whom they had made no such treaty, and to whom they were therefore bound to apply what they understood to be the existing rules of international law. The numerous ordinances of France before 1778, all declare the property of enemies found in neutral ships to be good prize. Great Britain at all times, and the United States, excepting during the two last years of the revolutionary war, have maintained the same rule. It is contained in the Swedish ordinance of 1715, and in the Spanish of 1702, 1718, and 1780. The ordinance of Denmark in 1659, and her proclamation in 1793 declare it also. The Spanish ordinance of 1779 directs that British property in neutral vessels should be captured and detained, to be dealt with, as the British should deal with Spanish property taken in similar circumstances, which was in fact to condemn it.

On the other hand, it is provided by the French ordinance of 1778, repealed in 1793, and reestablished in 1801, that free ships shall make free goods, and by the Danish prize instructions of 1807 and 1810, that 'free ship makes free goods

and hostile ship hostile goods.' But, notwithstanding these or any other ordinances of the same import, of which however we have seen none, the fact that the several powers above named, during the existence of treaties, in which they had stipulated to observe the principle of free ships free goods, applied by their public ordinances a different one to cases not provided for by treaty, proves that they understood and intended their treaty stipulations to be exceptions from the established rule, and not the rule itself, contracts binding between the parties and not mere declarations of the existing law.

And after all, what is the principle contended for as being *of right* part of the law of nations? Is it the single proposition of the armed neutrality, or the ancient double maxim of the Dutch? Supposing that the doctrine of free ships free goods was an established rule before 1780, how can it be denied that the converse maxim, which was till then its constant companion, and rested on the same authority, was so likewise? Is this now the law, or how and when was it abrogated? On the other hand, supposing the doctrine of free ships free goods not to have been the law in 1780, in what manner has it become so? The treaties since concluded contain various stipulations, and surely it has not been sanctioned by general practice. Was it established by the armed neutrality? But if this coalition had the right to establish, why had not that of June, 1801, an equal right to repeal it? In our opinion neither of them had any such authority. We have no respect for the pretensions of these holy alliances of a few great nations to the right of making a law for others, as independent if not as powerful as themselves; and when they mean to impose one by force and without right, they should be a little more united, consistent, and persevering in their efforts, than they have been in relation to this subject. On the whole, we see no sufficient evidence that the rule, which was the settled law in the middle of the seventeenth century, has since been abrogated or even unsettled by any competent authority.

'The only remaining passage in the article,' proceeds the writer in his Notes, 'which I think myself called upon to notice, is the following:

'"A pamphlet has been recently published here to refute the assertion of this writer, that the United States acquiesced in the

rule of 1756. We know of no acquiescence by the United States in this rule; but, on the contrary, they always protested against it, and compensation was demanded and received from the British government for the American vessels, which had been captured and condemned by virtue of the rule."

'The learned and ingenious reviewer seems to be rather delicate in his notions as to what may be considered an acquiescence by the United States in a principle of public law. He admits that they acquiesced in the rule that enemy's property on board of neutral ships is good prize, although this doctrine is stipulated in only one treaty, and the contrary one in seven: and again, he denies that they sanctioned the rule which makes provisions contraband in certain cases, although it appears in terms in the very treaty, which in the other case he seems to consider so weighty as to overbalance the authority of all the rest. It may therefore be difficult to satisfy him that the government ever acquiesced in another rule, which certainly has not been admitted so freely or to the same extent as the two just mentioned. In fact, the reviewer, who declares himself not to be aware of any acquiescence in the rule of 1756, is probably aware of the real state of the case; and the only question is, whether the word *acquiescence* is a correct description of the proceedings of the American government in regard to this rule. This is a point which I shall not insist upon very strenuously, if the reviewer is disposed to contest it. I shall content myself with stating the idea which I intended to convey by the term, and which I think is indicated by it with sufficient exactness in a composition, which, from its nature, cannot be supposed to aim at the verbal exactness of special pleading.

It is unquestionably true that the American government protested against the rule of 1756, when it was enforced by Great Britain in 1793, and obtained compensation for the captures made under it. It is also true, that upon its revival, at the opening of the second war of the French revolution, they again protested against it, although they never obtained compensation for the new captures. It is however, I apprehend, equally well known to all who are acquainted with the subject, that the government never made this point in their negotiations a *sine quâ non* of peace, as they did some others; for example, those of impressment and the orders in council of 1807; and that they did not regard the concession of it by England to the full extent of our claims as essential to the national honor and independence; but were rather disposed to make it a matter of compromise and mutual agreement. Not to enter into a long detail of facts and authorities in reply to a summary assertion unsupported by any, I shall quote, in proof of this remark, a single passage

from a letter, written on the 17th of May, 1806, by Mr Madison, then secretary of state, to Mr Monroe, then our minister at London, and employed in the negotiation of a treaty upon all the points in dispute between the countries.*

'"Particular care is to be taken that no part of our principle [in regard to the rule of 1756] be expressly or virtually abandoned, as being no part of the law of nations. On the contrary, it is much to be desired that the general principle in its full extent be laid down in the stipulation. But as this may not be attainable, and as too much ought not to be sacrificed by an inflexible pursuit of abstract right, especially against the example and sentiments of great powers having concerns and interests with the United States, *you are left at liberty, if found necessary, to abridge the right in practice*, as is done in the supplement of October, 1801, to the treaty of June of that year, between Russia and Great Britain."

'I repeat, however, that I am not tenacious of the propriety of the word *acquiescence* as here used, and will cheerfully admit, if the reviewer and the author of the pamphlet desire it, that in the hasty and merely incidental allusion to this point, which I have made in a single line, I have employed a word which would naturally convey in this connexion the idea of a more full and direct admission of the rule than ever actually occurred. But I confess myself quite at a loss to conjecture how my remark upon this subject, supposing it even to be erroneous, can be construed into a censure on the government of the United States. It is perfectly obvious, on the contrary, upon the slightest inspection of the passage, that I make the remark, *honoris causâ:* and represent the conduct of the government as highly commendable and politic. After expressing my unqualified disapprobation of the rule of 1756, and stating that the government entertained the same opinion of it, I observe that from motives of moderation and policy they had declined asserting, by violent measures, the full extent of their rights as a neutral power, but had acquiesced in such belligerent pretensions, as did not violate too directly the national honor and independence, giving as examples of this sort the rule of 1756, and the claim to seize enemy's property on board of neutral ships. This view of the subject I believe to be substantially correct, both as regards the facts in the case and the motives of the government. But whether correct or not, nobody can dispute that my language expresses approbation of the proceedings of the government, and not censure.'

'* State papers, vol. v. p. 456.

Those who recollect the repeated denials of the rule of 1756, contained in our state papers, and the almost indignant language in which the government repel the insinuation that they had *acquiesced* in this among other belligerent pretensions, could not have expected from the author of Europe the assertion, however incidental, that they had done so.* He now states that, although the government protested against the rule, they did not obtain compensation for captures made under it after 1802, nor make this point a *sine quâ non* of peace, nor regard the concession of it to the full extent of our claims as essential to our national honor and independence; but were disposed to make it a matter of compromise and mutual agreement, and that this is the conduct which he means to designate by the term acquiescence. We have certainly no disposition to contend with him about words, nor the slightest objection to his employing the term in this sense, but he must not be surprised that we mistook his meaning, until he informed us that he intended to affix to so common a word so unusual a signification. Even now, unless we misunderstand him again, we cannot accord with him entirely in sentiment. The concession that his language might convey the idea of a more full and direct admission of the rule than ever actually occurred, implies, that in his opinion there was some sort of admission of it. Now we believe the government never admitted, but constantly denied the validity of the rule. Not to accumulate authorities, we refer to the very passage, which the writer has selected from the state papers to support his opinion. It enjoins the negotiator not to abandon our principle expressly or virtually, and expresses a strong desire that it be stipulated in its full extent, permitting him, however, if this cannot be done, to abridge our right in practice. What is meant by *our principle* in regard to this rule? Mr Madison himself tells us in the same sentence. It is 'that neutrals may lawfully trade, with the exceptions of blockades and contraband, to and between all ports of an enemy, and in all articles, although the trade shall not have been open to them in time of peace;' a direct and absolute denial of the whole rule of 1756, which is, that neutrals cannot lawfully engage during

* See Mr Madison's letter to Mr Erskine of March 25, 1806. 6 Wait's State pap. 303 to 305; and the report of a committee of congress of Nov. 22, 1808. 6 Wait's State pap. 410.

war in any trade not open to them in peace. Hence so far as any treaty should admit this rule, so far it would abandon our principle. If then the conclusion of the paragraph cited is taken to be an admission of the rule, it would seem to be a little at variance with the beginning, and to expose Mr Madison also to the charge of inconsistency. The passage, however, will appear perfectly clear and consistent, if we advert to the great and obvious distinction between admitting a rule, which declares that we have no right to carry on a trade in war not open in peace, and consenting by treaty to abridge our right in practice. In the one case we abandon the right, in the other we assert it, but agree to refrain from its full exercise. An admission of the validity of the rule concedes that belligerents have, by the law of nations, authority to prevent our engaging in such trade, an authority, which is of course perpetual, and cannot be controlled or restrained without their consent; while such authority, granted to a limited extent by express treaty, lasts no longer than the treaty, on which it is founded, and cannot be prolonged or extended without ours. This distinction was repeatedly urged on our ministers. Mr Madison, in his instructions of January 13, 1806, after stating that the president is willing to agree that we will refrain from trading directly between a belligerent nation and its colonies, provided the trade between those colonies and our ports shall not be interrupted, adds, 'but [the president] expects and enjoins, that you will be particularly careful to use such forms of expression, as will furnish no pretext for considering an exception of the direct trade between a belligerent nation and its colonies as declaratory of the neutral right, and not a positive stipulation founded on considerations of expediency.' Our government in the same manner offered to agree, that we would refrain from exercising our right to employ British seamen in American ships, provided that no impressments should be made from them; yet surely this was no acquiescence in the claim of impressment.

We cannot relinquish to the authority of this writer, highly as we respect it, our opinion that the right of the British house of lords to put a negative on all legislative acts, is a great and efficient power; and that the division of our own legislatures into two branches, which certainly rests on entirely different principles, is a measure of much practical convenience and

utility; but shall wait for the arguments, which he intimates an intention of publishing on these subjects, with the confident expectation of being instructed and delighted by them, and with no unwillingness to be convinced.

The author thinks very naturally, that we ought to have given our hearty and unequivocal approbation to the improvements suggested by him, and to have refrained from making any remark about extravagant and hopeless schemes, which could be supposed, from its connexion, to allude to his opinions. This seems to require that we should state more particularly the application of the single remark to which he alludes. In his work on Europe he says: 'If, at a future period, a serious attempt should be made, by a coalition, or in any other way, to remedy this evil, it would be highly expedient to strike at the root of it, and not to stop at the very unsatisfactory point, at which the coalition of the armed neutrality fixed their pretensions,'* and he subsequently recommends the adoption of such a provision as was contained in our first treaty with Prussia, as conformable to the humane notions of the present age. We know not whether he means that this should be the first step, or only the ultimate object of those who wish to mitigate the existing laws of war; but his language, we think, has a tendency to encourage the idea that it would be expedient to *begin* any serious attempt to remove the evil of which he complains, by striking at the root of it, and proposing a stipulation to abolish at once the practice of capturing the private property of enemies at sea. It seemed to us not irrelevant to oppose this idea, which his language obviously favors, without determining whether he intended to inculcate it or not, which we are even now unable to decide; for, in our opinion, there is no reasonable ground to expect, that such a stipulation would be generally adopted in the present age, still less that it would be faithfully observed. We believe the most liberal rule, which could at first be established and enforced, is one which stops short even of that of the armed neutrality, the rule inserted in our last treaty with Spain, that a neutral flag shall cover the property of those belligerents who allow it to cover the property of their enemies, and not of others, and that to begin by introducing this would be more likely to pro-

* Europe, 407.

duce a practical effect, than any attempt to set up a more indulgent principle. The willingness expressed by the United States to establish the perfect freedom of commerce, in time of war, is highly honorable to them, as evincing a liberal and benevolent policy, and the more so because it is entirely disinterested; since it is very doubtful, to say the least, whether it would promote the immediate interests of this country to give security to the commerce of belligerents. But though the stipulation, contained in our first treaty with Prussia, is, on this account, highly creditable both to the negotiators and to the government; subsequent experience has shown, that there is little probability of its being soon established as part of the law of nations, and its omission in the second treaty is, in our opinion, no subject of regret.

From the author's repeatedly associating the claim of belligerents to seize the property of their enemies on board neutral vessels, as a pretension of England, with the rule of 1756, and from his remarking that 'for these pretensions authorities more or less satisfactory were adduced from the laws and usages of the worst periods of European history, but whether the case of England was made out, even on grounds like these, is a question, which has not been settled and is hardly worth examining;' as well as from some other passages in his work on Europe, we certainly supposed that he questioned the validity of this claim;—and that he questioned it on the ground of its unreasonableness, for he makes no other objection to it, and argues this at considerable length. The object of the first part of the paragraph, last cited in these Notes from our review, was to prove the fallacy of this argument, by showing that it would lead to the extravagant conclusion, that war itself was contrary to the law of nations, since the author asserts, what we are not disposed to deny, that it is both unreasonable and cruel. So far then is the passage from ascribing to him, or to any one else, the strange heresy, that war is in fact contrary to the law of nations, that it supposes the proposition to be so absurd, that if it could be shown to follow from the argument which we understood him to adopt, this of itself would prove that argument erroneous. These Notes inform us that we were mistaken in supposing this right to be in any manner questioned; but we trust the passages above referred to will be deemed a sufficient excuse for our mistake.

We shall cite but one more passage from this pamphlet:

'I cannot, it is true, quite go the length which the learned critic does, when he states that it is not for one nation or one individual to deny that an existing custom is reasonable; nor do I believe that he is supported in this by good authorities. Vattel holds, on the contrary, that "if an established custom be wise and useful, or even indifferent, it ought to be considered obligatory: but that if it contains any thing unjust or illegal, it is of no force, and every nation is under an obligation to abandon it, as nothing can oblige or permit a nation to violate a natural law." 3, 7, 112. Here the obligation is placed on the other side, and a single nation, instead of having, as the reviewer states, no right to denounce an existing custom as unreasonable, is bound on the contrary to do so whenever it can be done with truth. This doctrine appears to be much more plausible than the other. And to bring the matter to a practical test, I take the liberty of asking the ingenious critic, whether the nation which first denounced the then existing custom of the slave trade as inhuman and unreasonable, did what it is not for a single nation to do. Indeed, the reviewer himself does not seem to be very firm in the faith he professes upon this point, since he states immediately after, that any nation, desirous of changing an existing custom, may take the first steps toward this end by waving the right that accrues from such usage to itself, and thus setting an example to others that may finally be followed by all. Now if he allows a single nation to do this, he would not probably refuse it the privilege of publishing its motives for so doing, which would necessarily amount to a denial, that the custom in question was reasonable.'

The author would not have ascribed to us the whimsical idea, which he so ingeniously refutes, that one nation or individual may not deny an existing custom to be reasonable, if he had not overlooked a few words, which were not intended to be unmeaning. Our remark, referring to the argument abovementioned was, that 'the universal prevalence of a custom is sufficient evidence that according to the common sentiment of mankind, it is reasonable; and it is not for one individual or one nation *to control all others* by denying it.' This expression and the whole context show that our object was merely to state, that no nation or individual could avoid its obligations to others or extend its rights over them as established by the existing law, on the ground that the law was unreasonable; and not to call in question the right of nations or individuals to govern their language and their conduct, not

affecting others, according to their own notions of rectitude, or to express freely whatever opinions they may be pleased to entertain. To answer the author's ingenious question; the nation, which first abandoned the slave trade and published its motives for so doing, did only what was its right and its duty. And the same may be said of the individual who first did so. But had that nation undertaken *to control all others* by its opinion, and to punish their subjects engaged in the traffic as pirates, this would have been altogether incompatible with the principles of public law.

It is very natural and excusable that this author should be peculiarly sensitive in regard to every expression, which he could imagine to charge him with speaking disrespectfully of the American government. We had no intention to cast any such imputation on him, nor do we think that our language imports any. Indeed we should be slow to forgive ourselves, had we uttered a doubt of his respect for the government of his country, or of the ability and fidelity with which he has served it.

Note. We forgot to refer above to the letter of Messrs Pinckney, Marshall, and Gerry, to the French minister of foreign affairs, dated January 27, 1798, in which they argue at length in favor of the same construction of the 18th article of Jay's treaty, which we have adopted. The following extracts will give some idea of the course and the result of their reasoning.—'The objections to this article shall be considered according to its letter and according to its operation.'—'The admissions contained in the clause are, 1st, that provisions are not generally contraband, and, 2dly, that they are sometimes contraband.'—'The only alteration, which is by the letter of the clause produced in the law of nations, is to exempt from confiscation goods, which under that law would have been subject to it. But it has been suspected to have an object and an operation in practice different from its letter.'—'America with the pride of conscious integrity repels this insinuation.'—'The intention of the government and the practice under the article are in direct opposition to these injurious suspicions.'—'It is plain then that this article admits the seizure of provisions in no situation, where they were not before seizable.' 3 Wait's State papers, 239 to 242.

Art. IX.—*A Geographical Dictionary, or Universal Gazetteer, Ancient and Modern. In two volumes. By. J. E. Worcester, A. M. Second edition.* Boston. 1823.

Of the first edition of this work we expressed our opinion at the time of its appearance,* and availed ourselves of that occasion to attempt a survey of the changes, which have tak-

* See North American Review, VII. 39.

en place in political geography, within the last thirty years. The present edition is considerably augmented in size, and still more in the amount of its contents, in consequence of the more diligent condensation of matter, with which it is compiled and printed. Mr Worcester informs us, in his modest preface, that having possessed himself of various additional sources of information, he has undertaken a laborious revision of the whole work, written anew almost all the principal articles, and given to it a more systematic form, than it possessed in the first edition. In its present form, it is, we believe, the most comprehensive geographical dictionary that can be called a *manual*, and we think it would be difficult to name a work in two volumes in which more information is contained. The great demand for books of this class, which exists in America, is strongly characteristic of our habits and taste, and the skill manifested in their compilation not less indicative of the literary improvement of our country. One needs but cast his eye on the little volume, bearing date a hundred years ago, which, by the name of a gazetteer, has descended as an heir-loom in most of our families, and in which the geography and statistics of the habitable globe are comprised in a small and ill compiled duodecimo, and contrast such a volume with the work of Mr Worcester, to be convinced of the progress of modern society.

An inspection of Mr Worcester's preface will suffice to show, from what authentic sources his Gazetteer has been composed. Besides various original works, the best English, French, and German gazetteers and books of geography have furnished him materials; and the diligence of the Germans in this department is so well established, as alone to guaranty the instructiveness of a work, in which they are duly consulted. The following passage from the preface will prove the extensive range of Mr Worcester's inquiries:

'It would be unnecessary, if it were possible, to specify all the sources from which information has been derived. It may not, however, be improper to mention some of the principal ones. The two works of similar design, which have contributed chiefly to the improvement of this, are the Edinburgh Gazetteer, completed in 1822, and Hassel's "Geographisch-statistisches Handwörterbuch," published at Weimar in 1817. Both of these are very valuable works, abounding in recent geographical and sta-

tistical information. The geography of the United States has been improved by the use of various recent publications and documents, and particularly by an extensive correspondence with the different parts of the country. The late census has been incorporated; and in cases in which the population is stated without date, it is to be understood as given according to the census of 1820. Among the sources from which information has been derived respecting South America, are the publications of Bonycastle, Mawe, and Brackenridge, and the documents furnished to the government of the United States by the commissioners of 1817. In giving the statistics of Sweden and Norway, use has been made of Djurberg's Geographical Dictionary of Scandinavia, published in Stockholm, in 1818, and of Hagelstam's Geographical and Statistical Map of Sweden and Norway, published in 1820. Among the works made use of with regard to France, is the geography of that country by Mentelle, published at Paris in 1821. From Picot's Statistics of Switzerland, published at Geneva, in 1819, information has been derived respecting that country In improving the notices of the articles pertaining to Great Britain, the Edinburgh Gazetteer has furnished the principal materials; it has also been of great use with regard to the rest of Europe, and the other parts of the globe. The works of Hassel, Liechtenstern, and Cannabich have furnished much information respecting Europe, and particularly Germany. Hassel, and also Malte-Brun, have been of much use with regard to other parts. In addition to the works above enumerated, recourse has been had to books of travels and various other sources. In cases in which the information is doubtful, or the statements differ, the authorities relied upon are frequently given.'

Works of this description are liable to some defects almost inseparable from the nature of their composition. In briefly alluding to these, we are so far from referring particularly to the Gazetteer of Mr Worcester, that we are disposed, on the contrary, to regard it as freer from them than any other work of the kind before the public. It is obvious, however, that, from the way in which gazetteers have been written, a good deal of superfluous matter has been accumulated and still more that is valuable omitted. The great occasion of the composition of these works, we suppose to have been the extensive military and commercial operations of modern times. War and trade have not only drawn the attention of the world, from time to time, to particular regions and permanently fixed it on some; but they have also in various ways furnished the information, for which they first create the demand. The almost incredible number

of newspapers printed in the free countries of the world, in making every man a reader of intelligence, political, military, and commercial, from the four quarters of the globe, has spread far and wide the demand for compends, in which geographical and statistical information is reduced to the most convenient order.

We confess ourselves unacquainted with the first essay at the compilation of a work of this kind in Europe, but we suppose it admits little doubt, that it was made for the gratification of the interest existing in the public at the time. If produced in the thirty years' war, a period uncommonly productive of geographical writings, it would dwell of course most on the geography of Germany. At a later period it would be filled with names accommodated to the Turkish campaigns. A gazetteer from the time of the duke of Marlborough would be full in the chapters of Flanders and the Upper Danube. It is only within the last fifty years that geography has been so thoroughly treated, that geographical dictionaries have thrown off the local character they possessed, and all parts of the world are described with a fulness in some degree proportioned to their respective importance. It is evident, that to write a perfect gazetteer, it would be necessary to read all the original works, of all kinds, that contain geographical and statistical information, and to condense the result in an alphabetical form, and with a reference to the spirit of the age, and the predominant topics of interest. In a work thus composed something no doubt would be omitted that now holds its ground by prescriptive right in these works. We do not mean to hint at the changes, which take place in political geography, and which require from time to time to be corrected; but to the different parts of the world to which the eyes of men from age to age are turned. When Bonaparte marched his army to Moscow, notwithstanding a part of the way had been beaten by Charles XII, the gazetteers could tell us little of Mojaisk and Maloiaroslavetz. We shall now be better instructed on these heads, but, meantime, we want a guide to follow the campaigns in the Cordilleras of South America, or the interior of modern Greece. In fact, so completely has the wheel of fortune been turned round, that if the wars of the Persians in Armenia, of the Turks in Greece, and of the bey of Egypt in Arabia continue, all our modern gazetteers will sink in value, and a good

manuscript of Stephen of Byzantium, were we fortunate enough to possess that work entire, would be worth them all. Now we suppose that a person, in undertaking to compile a gazetteer feels a great reluctance at omitting any name of a place, which he may find in the preceding works; for fear that a sacrifice might be made of useful information, and in the opinion that the value of a geographical dictionary increases directly in proportion to the number of articles which it contains. In this way, works of this kind become crowded with a mass of names of no present interest; and hundreds of articles which will probably never be consulted still retain their places. To strike out these names might require a little hardihood, a little of Mr Burke's courage of the cabinet, but it would materially reduce the bulk of the volume and improve it by the removal of superfluous matter.

If, in the way we have stated, some superfluous matter has been accumulated, something also that is useful has been omitted, from the mode in which these works have been drawn up. No two ages require the same subjects in a gazetteer. We wish to hear of different places, and in a different way of the same places. Many points of information, once thought important, have lost their interest, and other views have risen into consequence. Our geographical dictionaries are now pretty well rid of the old political geography, and the changes which have been introduced since the French revolution, and of which we took a survey in our notice of the first edition of this work, have become incorporated into the best recent gazetteers. But, if we mistake not, the spirit of the times is so revolutionized, such important innovations have been made in the range of political, military, and commercial reading, voyages and travels have so multiplied, that a perfect geographical dictionary, compiled from original materials, would differ in important features from former works, in the articles it might have in common with them; would not only omit many articles they contain, but extend to many which they omit.

One more suggestion we venture to make on this subject. The design of a geographical dictionary appears to be to enable the person who consults it, to inform himself farther with respect to any geographical name, which he may meet in his reading. Such articles then as consist simply of the name of a place,

and the country to which it belongs, and which of course can add nothing to the information of the reader, who has met with these names in a bulletin or a log-book, might perhaps be omitted without detriment. In a system of geography it may be important to omit no name, which is known to belong under the head of any country. It may sometimes be necessary simply to enumerate towns, rivers, and lakes. But the design of a geographical dictionary being still farther to explain such geographical terms as occur in reading, it would seem that one might dispense not only with all those names which are of infinitely rare occurrence, but also with all those of which little beside the name is given.

In these points, Mr Worcester's Gazetteer, like all other works of the same kind, perhaps, admits of improvement. The different geographical works which he has published, show him to be a person fully competent to introduce the superior mode of compiling a gazetteer, at which we have hinted, and toward which indeed he has made excellent progress in this gazetteer, in writing several important articles anew, and from the latest and most authentic materials. We are aware also, that the prevailing prejudice is likely to be against us, on the subject of the omission of any kind of names in a dictionary of this sort. We have observed that a value is set on similar compilations in direct proportion to the number of articles. Though we are persuaded that other considerations are more important, and that a judicious selection is more to be desired than an unlimited accumulation, Mr Worcester will probably find few to quarrel with him for having taught them more than they wished, and we cannot but recommend his work to that extensive patronage, to which its highly laborious and conscientious compilation is entitled. The typographical execution is unusally neat and sightly, and the whole work forms a repository of geographical and statistical information greater, we apprehend, than is elsewhere condensed into the same compass, and extremely well adapted to this inquisitive, commercial, news-loving community. By this last sentence, moreover, we would by no means be understood to mean that Mr Worcester's Gazetteer is only a newspaper companion. On the contrary, the perusal of the leading articles will establish its claim to the attention of the scientific and curious student of geography. A gazetteer is a book which no

man sits down to read, and reviewers, who read nothing, may well abstain from a gazetteer. Those articles, however, of Mr Worcester's work, which we have had occasion to examine, are prepared with singular diligence and accuracy.

Art. X.—*The Prospect before us, or Facts and Observations illustrative of the past and present Situation and future Prospects of the United States, embracing a View of the Causes of the late Bankruptcies in Boston: to which is added a Sketch of the restrictive Systems of the principal Nations of Christendom. By a Pennsylvanian. Fourth edition improved.* Philadelphia, 1822.

This publication speaks the opinion of a school of economists, who have been active in diffusing their doctrines. Four editions of it were sold or otherwise distributed last autumn and winter, apparently with the design of aiding the attempt which was made in the last session of congress to procure a revision of the tariff, in order to the encouragement of American manufactures. The pamphlet cannot be said to contain any new principle, or new argument. The topics which it treats are, on the contrary, somewhat trite; such as the balance of trade,—the drain of specie,—and the futility of the theories of Adam Smith. There are in it also many misconceptions, as we think, of facts, and as it proclaims the creed of a zealous school of economists among us, and as no pains, we understand, have been spared in circulating it, we have thought it worth while, in a brief commentary on a part of its contents, to expose what we esteem its errors. This we shall do without observing any other order of topics, than that of their occurrence in the work, and with a wish to preserve a more temperate tone than is always conspicuous in the pamphlet itself.

1. With respect to the cause and extent of mercantile distress, our author says:—'that the mercantile class is, and always has been, too numerous for the commerce of the country, is admitted on all hands; and that the extraordinary number of bankruptcies which have taken place, not only lately, but during the whole course of the wars of the French

revolution, have arisen from the excess of their numbers, is equally clear. Now whence does this arise? From the depression of manufactures. Thousands of young men, who, had the cotton, woollen, iron, brass, steel, and other manufactures been properly protected, would have been devoted to them, have become merchants, and thus immoderately swelled the number of the class—and hence followed the ruin of so many of them.'

Now that the pursuit of commerce, like every other profitable pursuit, in every free country, has been overdone in America, is true, though by no means to a ruinous extent, upon the whole. On the contrary, the world does not furnish an example of a prosperity so great, so wide spreading, and so rapid as that, which has attended the American commerce, since the time of the French revolution. No where in the history of civilized nations has there been such an instantaneous creation of property, such a conversion of human skill and industry into value, as in the American commerce in this period. This threnody over the crowding of our commerce and its supposed calamitous consequences is to be taken with the reservation, that this commerce has been attended with a diffusion of prosperity, wealth, and improvement unexampled. But suppose the evil to be real, (or as far as it is real,) there is no propriety in ascribing it to the discouragement of manufactures. Different causes have led to the zeal with which trade has been pursued. Young men have crowded into commerce, because the rising generation in this land is ardent and enterprising; because it is intelligent and well informed; because it is frugal and in good credit; because the sea, that beats our native shores, calls out the inhabitants upon it; because the European nations, busy in the dark industry of destruction, have stood in need of our neutral flag to convey their colonial produce; because our citizens have thus been able to turn their hardy muscles, their temperate habits, and their sagacity to a good account; because a rapidly increasing population at home has furnished a market for a vast amount of foreign produce; and because that free government, for which their fathers fought, has left them unrestrained in the choice of their pursuits. These are some of the causes which have occasioned the press into the ranks of commerce. To say this press is owing to the depression of manufactures, is

purely gratuitous. Supposing it possible, that legislative provisions could have made manufacturing as profitable as commercial industry, (though some of the attractions of the latter pursuit would have been still wanting to the former,) does our author suppose that manufactures would not have been overdone; that there would have been no rush into that business, and none been drawn unprofitably from the plough, or the helm, to the spindle—that there would have been no bankruptcies? Let us look at England, a country, surely, where manufactures are sufficiently encouraged. Observe the bankruptcies proclaimed in the gazettes, and see whether they are confined to merchants. We have taken up the first magazine that came to hand, and out of one hundred and forty bankruptcies in the month from November 17, to December 15, 1821, twenty only were of mercantile establishments, and the other sixth sevenths of every species of manufacturers. We have no doubt this proportion is constant; and indeed who that considers the matter can doubt, that precisely the same causes which produce bankruptcy in commercial, would produce it proportionally in manufacturing pursuits? Bankruptcies are caused by misfortune, untoward accidents of all kinds, by want of skill, want of industry, of economy, of prudence, of judgment; by some or all of these combined. Every profitable pursuit will draw a crowd of undertakers, some of whom will be exposed to a part or the whole of these sources of failure. To ascribe the bankruptcy of merchants to their numbers merely, is to take, then, a very superficial and an incorrect view of the subject.

Equally inadequate is our author's account of the cause of the failure of many manufacturing establishments, which cause he seeks in the want of protecting duties. He tells us truly that many manufacturing establishments were broken up by the return of peace, and some of them, no doubt, in consequence of the competition of foreign products. But when we look into the history of these factories, we find other causes of their destruction. Almost every newspaper a few years since, as is still the case, related the burning of some great wooden castle, under the name of a cotton factory,—a vast tinder-box, miserably guarded, and situated in a village, perhaps, where nothing like a fire-engine existed. So common was this, that it was currently asserted in times of high party excitement,

that British emissaries were regularly employed to *discourage* our manufactures in this summary way. Again, all manufactures, to be prosecuted to great extent and with great profit, require a very complicated and perfect machinery, not to be had without a great disbursement, nor easily for that. Accordingly, the factories which were so imprudently set up at every waterfall in our country, ill provided with machinery, possessed of none of its most costly improvements, and furnished with nothing but of the cheapest and most ordinary construction, though they might be able, during the total exclusion of foreign trade in time of war, or under a system of prohibitory duties, to continue in operation, must necessarily stop, under any competition. Many accordingly did stop; and who that sees them and knows how they were furnished and how managed, but rather wonders how they got on? Another cause of the failure of our manufactures was the want of experience. A vast accumulation of individual and traditional observation, of dexterity acquired in practice, and often of secret skill, is necessary to the successful conduct of a factory. More or less of it is necessary in every pursuit. A capitalist who knows nothing of trade, would commit a great error in buying cargoes, chartering ships, and making voyages. We much fear, that, without 'any depression of manufactures,' he would soon become bankrupt. But yet it is much easier to conduct a voyage than a factory. Good ships can be bought to your hands, cargoes judiciously laid in by the brokers, and experienced captains sent to sea. But to command all the skill, ingenuity, and experience, requisite to erect and conduct a factory, is a far different affair. Hundreds were erected without a particle of either, and stand the mournful monuments of the improvidence of their undertakers. A tariff of duties, which is to secure the success of such establishments, may well be called a tariff of *protecting* duties. It would be a good deal cheaper for the country to let the government give these establishments, one or two hundred thousand dollars each, and beseech them not try to manufacture. The fourth great cause of the failure of manufactures is the want of capital of those who set them up. *Ex nihilo nihil fit*, and all the tariffs which our author praises, from that of Russia to that of Peru, would not make a manufacturing establishment profitable, were its undertakers obliged to borrow money to erect their buildings, construct

their machinery, and purchase their raw materials. Notwithstanding the low opinion which our author expresses of Adam Smith, yet, as he has found one sentiment in the Wealth of Nations, to which he yields assent, we pray his attention to another. Having maintained that a bank could not, consistently with its interest, advance to a trader any considerable portion of his circulating capital, Adam Smith adds, 'still less could a bank afford to advance him any considerable part of his fixed capital; of the capital which the undertaker of an iron forge, for example, employs in erecting his forge and smelting house, &c.' Now it was principally on loans of this kind, which it was neither the interest of the undertakers to solicit nor of the banks to grant, that many of the factories in this country were erected; and the natural consequence was that bank and factory usually went over the same dam together. A generous competition existed for a while; the factory wrought up the raw material into cotton, which the bank wrought up into bills, and a year or two put a stop to both processes.

When we make this statement, however, such writers as our author may exclaim *habes confitentem*, and tell us this want of capital is precisely the evil, and that they demand legislative provision to direct capital into the channel of manufactures. This may be done by enacting such a tariff of duties as shall make it unprofitable to employ capital in commerce, and lead its possessors either, first, to lend it to the manufacturers, or, secondly, to manufacture themselves. The first expedient we aver to be unprofitable. In any thriving state of manufacturing industry, under any tariff powerful enough to destroy importation, it would be impossible to carry on manufactures, upon a borrowed capital. No ordinary state of profits could enrich the undertaker, who should be forced to borrow his capital; the business would fall into the hands of those who would conduct it on their own account; the small undertakers in manufactures, like the small merchants in commerce, would bear the brunt of every fluctuation of the business; every fall of prices would put it out of the power of some one or more petty establishments to fulfil their contracts with individuals or banks; and just that class of manufacturers who are now clamoring for protection, would have to clamor as loudly as ever. The second expedient is to force capitalists themselves

to embark in manufactures. Now, though this would in no degree relieve, but oppress more than ever the small undertakers in manufactures, though there would be just as many bankruptcies on the same amount of manufacturing as there are on the present amount of commercial capital, and though any legislative provision is, indeed, merely a bounty paid the manufacturer at the expense of the consumer, yet we certainly do wish that, as fast as the country is ripe for it, capital may be employed in manufactures. Just as it will always remain our interest to import certain articles from abroad, it has become and will still more become our interest to make others at home. As fast as the American manufacturer can go on to produce the article as cheap as the foreign, so fast we would have capital turned to manufactures; so fast it will turn itself to manufactures, and no faster. But when we go to work with these violent measures, which are to drive capital out of commercial investments and divert it into manufacturing ones, it deserves consideration that all the capital, in this country, is the growth of scarcely more than thirty years. Much of it is still in the hands of those, who have acquired it themselves in commercial pursuits. To engage in a system of legislation, avowedly for the purpose of driving a class of men who have grown up and grown old in commerce, into a new pursuit, is at least a very questionable policy. There is no such pressing need of hurry in the thing; let people have a little time to breathe, and, if the business is so good as you say, depend upon it, it will be followed up.

2. Our author next touches an old stumblingblock,* *the balance of trade.* The sound doctrine is so well admitted on this subject, that it seems almost idle to agitate it, and many of our writer's remarks, if we may venture to say so, sound like the arguments which we find against the Copernican system, in books of the early part of the seventeenth century. Our author sneers at it as a *dictum* of Adam Smith; but certainly there is not a respectable writer on political economy, who holds a different language, and we may challenge him to produce one, from M. Storch in Petersburg onward to the south, who does not reject the system which he maintains on this subject. 'Shall we continue to purchase more of foreign nations, than they are willing to purchase of us? Shall we continue to re-

* See Hume's essay on this subject.

ceive the laces, cambrics, silks, and woollens of France at seven and a half, fifteen, and twenty-five per cent. duty, and the linens, cutlery, and woollens of Great Britain at fifteen, twenty, and twenty-five per cent., when neither of these nations will receive in payment, for their own consumption, a barrel of our flour, the great staple of half the population of the United States?' But how is it possible to ask, whether we shall continue to purchase more of other nations than they purchase of us? How can such a thing be? A purchase is an exchange; a *quid pro quo.* For every thing the British or French merchant sends us, we send him what he regards as an equivalent; for every thing the American merchant sends to England or to France, he receives back an equivalent. Mistakes and errors of course in single cases may be made. Ships, on the outward or homeward passage, may be cast away or lost, bad purchases made, and losses encountered. These, however, in a trade of a hundred millions, on each side, must balance each other, as the causes that produce them are in existence in one part of the world as well as the other, and the Americans, in particular, do not labor under the imputation of being the party most likely to be *taken in.* With these premises it is surely vain to talk of our purchasing of one nation more than that nation purchases of us. An exchange of values, considered equal, is the very definition of a purchase.

But this brings us to the keystone of this system;—if we purchase of others more than they do of us, we must pay the *balance in specie.* In this, and its supposed necessary consequences, may be traced, according to our author, the *fons et origo malorum;* and the very terms of the proposition, 'to pay the balance in specie,' are convertible, in his judgment, with prodigality, national extravagance, and ruin. This doctrine, though condemned by every sound writer, has been so assiduously cried up, that even judicious men have permitted themselves to be carried away with the current, and sometimes exclaim also against the 'drain of specie.' Congress has once been pushed to the verge of passing a law, to prohibit the exportation of specie; and its shipment from the country is somehow or other by very many regarded as a calamity. Were it any thing else that was sent away, it would be regarded as a proof of the demand abroad for the article; and, placing reasonable

confidence in the skill of our merchants, we should trust them to make their own bargains, and get an equivalent for what they send. To talk of a drain of cotton, a drain of tobacco, a drain of flour, or a drain of coffee or sugar, would be of course absurd. Such a drain would be hailed by all who wished the progress of America. We should trust the shippers to get their money's worth; and if we saw them year after year sending out their cargoes of wheat, cotton, and tobacco, we should have little doubt that year after year an equivalent was coming back with reasonable profit. But as for the exportation of specie, it is a drain, an impoverishment, a balance against the country. The merchant doubtless gives it away to the foreigner; he gets nothing for it; it might as well sink in the ocean as arrive at the port; and, moreover, a certain limited quantity of it is assigned by Providence to the body politic; to drain that, is to bleed the public to death.

Now nothing surely of all this is true. There never was a merchant, unless under some particular casualty, who made a gift of a cargo of specie to his correspondent abroad. There never, excepting under accidental circumstances, was a specie dollar sent to foreign countries, for which the sender did not calculate to receive in return, what he thought more valuable than the dollar. Nor is it his own judgment that decides him here; he exchanges his dollar for that which his neighbor, his customers, his country will think and do think more valuable. Moreover, there is nothing peculiar in specie to make that bargain bad, of which the price is paid in silver, which would be good, if the price were paid in cotton or tobacco. Specie is procured by our traders, in the same way that cotton, flour, and tobacco are procured. The merchant that remits specie, procures it by precisely the same process as is employed by the merchant that remits tobacco; and he is determined by prudence which to remit. Trade, it is true, may be and often is overdone. Cotton may be exported to a sacrifice; tobacco may be exported to a sacrifice; and specie may be exported to a sacrifice; and so may they all be exported to a profit. If a merchant, who owed a sum of money in England, were to send a cargo of cotton to pay it, our author would credit it in the national account. The lower the price was in England, and of course the more disadvantageous the operation to the American, the more the item would figure to our credit, be-

cause the more cotton would be sent. But let the merchant, finding that cotton will not sell to profit, prefer to send specie, which perhaps will, and lo, this little word has operated like a juggler's wand,—we must not trust the merchant, that he has acted prudently,—specie is drained off, and the country is so much the poorer. If a merchant, owing a sum of money in England, send a cargo of flour to the Havanna, invest the proceeds profitably in sugar, order this to Russia, sell to profit, and remit favorably to London to pay his debts, this we suppose our author would allow was good business. But let the same merchant bring the price of his flour home in dollars and remit them, and though the operation may be, in proportion to its extent, as profitable, this disastrous *specie* comes in and makes it ruinous. Whence arises this peculiar and, we may add, calamitous property in specie; famed as the great medium of trade, the great facilitator of exchanges; but found out by these economists to ruin every exchange between nations, where it is employed? Whence comes it into our country? Is it not brought in the same way as tea, as sugar, as silks? Is it not the labor, skill, attention, and capital of our merchants that bring it here, as they do brandy from France, or indigo from Calcutta? Will they ever intentionally, ever in the long run, bring more than there is a demand for? Is the demand for specie so unlimited, that, bring as much and carry away as little as you will, the value of the article is always the same? Will it come, when it will not yield a better profit than any thing else? Will it go, when it will yield a better profit at home? and while it does stay, what mysterious value has it, that it must be kept in the country by prohibitions,—that withdrawing it is to be called a drain? It is good neither to eat, drink, nor wear. Put a dollar before the hungry man or the thirsty man, and what will he do with it? *Export it;* drain his pocket of its *specie;* take his neighbor's beef and broadcloth and give silver in return, which our author regards as an abomination; and when he has filled his craving stomach and clothed his shivering limbs, a member of our author's school would tell him that the balance of trade was against him; that he had bought more of the trader, than the trader would buy of him, and that he was drained of his specie. Does the scale, on which we take the example, alter its nature? A large majority of this people like, at the close of the day, a cup

of tea; we like it ourselves. The gentle *stimulus* with which it excites the nerves, the mild companionship it seems to form of the solitary hour, the point of union which it constitutes among neighbors and friends, have elevated tea into serious importance; and, in an age like this, when whiskey and brandy are making such inroads, any liquid 'that cheers but not inebriates,' is entitled to the attention not merely of the political economist, but of the moralist and the politician. Whatever be thought of this, it is a generally favorite object of consumption. The mass of the people do say, that it soothes, cheers, and comforts them. We know that some of our manufacturers, we are sure our author will not patronise their extravagance, have also cast their eyes on the manufacture of tea; that they talk of 'the poisonous weed,' the 'worthless, insipid leaf,' and would fain bring the people of these hitherto favored states, to some loathsome decoction of oak leaves or St John's wort, which, forsooth, is as wholesome as tea. All this however is in the highest degree Hudibrastic. There is a redeeming spirit in the community that will resist the doctrine. It is in vain 'to commend the ingredients of the poisoned chalice to our own lips,' filled with camomile or succory; and the inhabitants of the United States, particularly the Yankee portion, know too well on which side their bread is buttered, to give up their coffee or their tea. They esteem them both cordials, and so they are. Now it so happens that this tea groweth not in the Genesee country nor yet on Sullivan's island, but in the Celestial Empire of China;—and your disciple of Confucius, being a sturdy restrictionist, will take nothing but specie in pay for his tea. The Americans, finding that specie, in its original form, can neither be eaten nor drunk, that the most you can do with it, in this case, is to melt it into a tea-pot, but that no art has ever melted it directly into tea, green or black,—having, we say, discovered these facts, have fallen into the habit of sending off some of their dollars to the Chinese, who send them tea in return. What the Chinese do with their silver is not known. It is said that they put it in pots (much as we do their tea,) and bury it in the ground; a policy which some might approve, as it must effectually prevent the specie from quitting the soil. Whatever becomes of the specie in China, some of the tea comes back to America to gather families together at the close of the day; to awaken

the vivacity of the social party; to stimulate the flagging appetite of the invalid; to brace the nerves of the student; in short, *to promote human happiness.* An exchange has been made of so much gold and silver, which could not be consumed for the supply of one human want or the gratification of one human taste, for a healthful, cheering beverage. Every body is the better for it; the merchant has made a good voyage, or he would not repeat it; the consumer prefers the tea to the price he pays for it, or he would not buy it; and more is done by the importation of it for the cause of good morals, than all that the societies for the suppression of intemperance ever accomplished. But the manufacturer tells you, how much better it would be to keep the money in the country. Why better? And what will you do with it? Eat or drink it you cannot. Coarse cottons and even printed ones, though exceedingly useful in their way, will not serve for cordial and food, as well as clothing. To say it would be better to keep the money at home, which we send away for tea, is merely to say that America would be a more favored country, if, to its own staples, it added those of China; and even if it did, unless we had a population so crowded, that two or three hundred children should daily be thrown into the river, it is doubtful, whether we could raise tea, cheap enough to be consumed, although it should grow on our soil, as freely as a Canada thistle. However, we grant that could tea be grown to profit in America, the country would be richer. If we united the prerogatives of all climates, we should be more prosperous than with those of one. If we could raise Champagne wine and Java coffee, and pepper, and tea, we could nourish a part of the population, which is now supported in France and India in furnishing us these articles. But till we can raise them, the country is neither richer nor happier for keeping the money at home, and consuming succory and New England rum. We have thus spoken of the specie trade to China, because our author, though he has much to say of the drain of specie, has put a face upon the facts of the case, which we take upon us to say they do not admit. We quote a sentence, which amounts, we think, to a confession that he has not fully investigated the subject, which he treats.

'There is one fact connected with this subject calculated to excite surprise. Of the amount of specie exported in the two

first quarters of this year (1822) from Boston, viz. $1,204,446; there is only about $6,200 stated as shipped for Great Britain, the items being as follows:

Batavia	$24,000		344,767
Calcutta	200,000	Dutch E. Indies	284,000
Cape de Verds	300	China	520,453
Buenos Ayres	8,000	India generally	41,000
Brazils	32,000	Liverpool	6,267
Cuba	80,467	Sundries	7,959
	344,767		1,204,446

'It is scarcely possible but that the exportation to Great Britain must have exceeded the amount stated; and it is perfectly supposable that there must be an error in the statement. But the point must be left to the decision of the reader.'

But we must except to so compendious a way of deciding points and dealing with facts. Our author and his school first assert, that we buy of Great Britain yearly from fifteen to twenty millions' worth more than she buys of us, and that, to pay for this balance, the country is drained of specie. They then go to the customhouse books, to prove that the specie is exported, and finding that out of $1,200,000, only 6,000 or $\frac{1}{200}$th part, goes to Great Britain, they then tells us, in the face of customhouse returns, that it is not possible more should not be sent to Great Britain, and leave the whole to the reader.

But we will grant to the author, though he does not himself, that we remember, urge it, that though this specie is not sent directly to England, it does still go, no doubt, in part to pay this aforesaid balance. It goes to China for tea, to Java for coffee, to Calcutta for indigo; and, these being sold in Europe, and the proceeds remitted to London, thus the balance is actually liquidated by our specie, though little of it be sent directly to England. This our author does not appear to have adverted to, or he would not have pronounced it impossible that the Boston return of specie sent to England was not erroneous, and stated that more must needs be exported; but he would have urged it to prove that, with all its circuitous channels, our trade nevertheless was on such a footing, that we must needs pay a specie balance to the English. Though we thus put the best face on his reasoning, and save the necessity of the

unpleasant intimation, that the returns of the customhouse in this point are grossly deceptive, we would observe that in thus tracing the specie by the route, which it really takes to England, we see how unjustly our merchants are charged with pursuing a ruinous commerce with that country. The dollars shipped from America, by a judicious investment in China, and another in Europe, will perhaps have increased in value fifty per cent. by the time they are finally remitted to London, of which gain, a portion goes to pay so much more of the 'balance against us.' Now this increase is a value added to American capital, by American industry, and if paying balances of trade, by the clear profits of our industry, be national ruin, one could never wish the country a better fate, than to be so ruined.

We are surprised that our author did not perceive what an inadequate, not to say what an incredible account he was giving of our trade. He states the excess of imports over exports for nine months of the year 1822, to be over $17,000,000. This he calls a balance against us to be paid by a drain of specie. But the whole excess of specie exported over that imported for the twelve months ending September, 1822, is short of $7,500,000. Now our author must either suppose that this $7,500,000 pays the foreign debt of $17,000,000, which is a pretty good business of itself, or he must suppose that a balance of $10,000,000 remains unpaid. This last he might do, were the importation of 1822 remarkably great; but it does not seem so to have been, and, in fact, it abundantly appears from Dr Seybert's chapter on the subject, besides that it is a matter of notoriety, that this balance *has always been against us.* From 1795 to 1801, the golden age of American prosperity, there was an aggregate balance against us of ONE HUNDRED AND SIX MILLIONS of dollars, making an annual average of more than $15,000,000 in the trade with Great Britain alone. From 1802 to 1804 inclusive, the annual balance of trade between the United States and Great Britain, was $17,071,253. From 1805 up to 1811, a period of seven years, 'the aggregate value of the British produce and manufactures annually exported from Great Britain to the United States amounted to 35,441,367 dollars; and the annual value of the domestic produce of the United States exported to Great Britain, calculated on the same average,

amounted annually to 9,124,941 dollars, leaving an annual balance of 26,316,426 dollars in favor of Great Britain.'* Since the termination of the war, this balance certainly has not been less. If our author chooses to say that this balance is paid in specie, it is very clear that it can only be by a great annual importation of that article, or a transfer of it to London, from other foreign ports. How then can this be called a drain of our specie, when it is the reexportation of an article imported only for the purpose of being thus reexported. So fixed is the author in the idea that it is all sent out of the country, that he calls in question the accuracy of the customhouse returns; and he not only chooses to maintain that this balance is paid in specie, but he insists that the country is drained of its *circulating medium* to pay it: without being moved by the enormous improbability, that the circulating coin of this country, should from 1795 up to 1801, a period of seven years, have paid over 106,000,000 of dollars, from 1802 to 1805, 51,000,000, and again from 1805 to 1811, a sum of 164,000,000 millions, a quantity of *silver*, not much less probably than the Mexican mines yielded in the same period. The only way by which our author avoids this difficulty, is to intimate that we annually become indebted to a vast amount to the English nation. As it is not probable that the annual average of the specie exported from the country exceeds $5,000,000, and as the annual balance of trade against us since 1795, may be safely assumed at $20,000,000, we should be thus made to incur an annual debt of $15,000,000, which, without reckoning interest, would amount, from 1795 to the present time, to *two hundred and seventy millions.* This is the unavoidable result of the plan, by which our author maintains that the balance of trade is paid by us to England. Either we have paid in silver since 1795, $360,000,000, or we are indebted to the English $270,000,000. Either conclusion seems to us a *reductio ad absurdum.*

These absurdities may be avoided by two possibilities, either of which is fatal to our author's supposition. One, and the true one, is that there is no balance against us, as will be presently explained;—the other, that if there be a balance which we must needs pay in specie, the specie must be imported as merchandise for this very purpose. To deny to merchants the right of exporting it, would be merely to cause,

* Seybert's Statistics, p. 287, 288.

remittances to be more directly made to England from foreign ports where our merchants collect specie, and no more of it would come to this country.

We say *no more*, meaning no more of all that had been imported for re-exportation. Our author speaks of *specie* and *circulating medium* as convertible terms, and would have it believed that, when dollars are sent out of the country, the circulating medium is reduced. The error of these antiquated views has been so often exposed, that it may seem superfluous to enlarge on them. Silver performs in society two functions, which are as unlike as the ordinary uses of a bank note and a bale of cotton. A portion of specie, *a very small portion*, acts an important part in society as a medium of exchange. The nature of the subject does not enable us to calculate with precision what proportion of coin is required to circulate any given amount of property, but it is certainly very small. Millions are bought and sold in the market without the intervention of a dollar, and the larger the scale and the more extended the mart, the less occasion there is for this medium of circulation. It is impossible to ascertain the exact percentage, which the amount of the circulating medium bears to the amount of the property which it circulates, the ratio being not constant but affected by the density of the population, the nature of its trade, and various local circumstances. Still, considering the innumerable channels of supply for whatever is in demand, and the instantaneous rise of prices when money abounds, and their depression when it is scarce, it does not seem possible that in any way—not even of legislative interference—the circulating medium can be diminished beyond what the business of the community demands. Diminishing its quantity will only increase its value for the moment, and occasion an influx. Increase its quantity, and its value will fall, and it will be exported. Wholly remove it in the shape of coin, and a substitute will be found. Mr Ricardo has abundantly proved, that specie is not necessary to circulate value. Why should it be? Nothing in the last analysis is necessary, but that which is itself to be consumed for the gratification of a want; and unless silver plate be called a necessary, there is no form under which silver can be so regarded; for in plate alone is it immediately consumed. For every other purpose, for that of circulation particularly, silver is convenient and safe, but by no

means essential. Who sees a silver dollar, nowadays? who wishes to see one? And if it were not more economical to use silver change, than to encounter the risk of loss and the expense of the engraving of bills, we should make no use whatever of silver, as a part of the circulating medium. In this respect highly advanced societies return to the practice of highly barbarous ones. The latter make no use of coin, but exchange produce against produce; and highly advanced societies, where property is protected by law, are content with much less cumbrous evidences of possession than silver.

A little reflection, indeed, must show that the consequences of a drain, even of the circulating medium, were such a thing possible, which we are strongly disposed to doubt, though certainly an evil, could be productive of no extreme consequences. The amount of the circulating medium, as we have said, is small in proportion to the property it circulates; to annihilate it, therefore, would, for the moment, be the annihilation of a small part of the national capital, of that part precisely which it is most easy to replace. Secondly, though the specie be exported, it is not thereby annihilated, but an equivalent in another form returns; and it is idle to talk of the country's being ruined, because a small part of its property has assumed a new form. Thirdly, all the essential elements of national wealth would remain—the fixed capital of the country—its territory—its population—and their industry and skill; and nothing, that does not destroy these, can deeply injure us. But we maintain that the drain of specie does not and cannot extend, beyond the moment, to the circulating medium. It must, from absolute necessity, be confined in a great measure to that other part of the gold and silver, which comes into the country by way of trade, and goes out in the way of trade, and which, if it cannot thus go out, will most assuredly not come in. That the specie exported must be confined to this part of the gold and silver coin is plain, because the moment it extends to the other portion, the real circulating medium, the price will begin to rise with a rapidity that will check the purchase of it, and produce an influx of more. The true circulating medium can never be exported, *because it is* the circulating medium. It is diffused throughout the community,—every man has a portion of it,—it exists no where in commercial masses, the brokers cannot collect it in-

to such masses, because it would rise upon them too rapidly in the act of purchasing it.

It is true a great temporary demand for specie, as for any other goods, may exist, and a scarcity of it ensue. The injurious consequences to individuals are, not that money enough does not remain to circulate the values in the community, for this, in the present state of the world's commerce, is manifestly impossible. But the price of money being raised, by the extraordinary consumption, those who have debts to pay at a certain period, that is, those who have contracted to deliver, sixty days hence, a certain quantity of money, are exposed to a loss; and failures may be the consequence. But is there any thing peculiar in this? Does this prove a deficiency in the circulating medium; and one that requires violent legislative interference,—duties on imports, bounties on manufactures, and a comprehensive change of our whole policy? How does the embarrassment just mentioned differ from any other, arising in trade from an unexpected state of the market? A merchant contracts to deliver flour at a fixed price, on a certain day; the crops fail—the grasshoppers, nature's active little brokers, consume all the ready standing corn; autumn refuses to make her usual discounts; and behold, our merchant, who depended on getting his usual accommodation from the great land bank of the soil, is ruined. Another contracts to deliver a sum of money in sixty days, and depends upon the high price of coffee, of which he has a cargo homeward bound, which he expects to sell to great profit, and with it pay his debt; his vessel has a long passage, others arrive, the markets are glutted, his coffee is sacrificed, and he is ruined. Is there any thing in these cases, essentially different from the other, in which the contract is made for money; or rather is it not in this form chiefly that money contracts are discharged? And is government to interpose, with its sovereign power, and make and alter tariffs, and turn industry out of its chosen and long accustomed channels, because improvident speculations have been attempted, and engagements entered into, of which the fulfilment has proved ruinous?

3. But our author has much to say on this last point, and has even brought the bankruptcies in Boston the last summer into his title page, with a promise of presenting a view of their causes. Their chief cause, in his opinion, is the drain of specie, the

causa causarum of all inauspicious effects. It is true, that failures to the number of ninety or more took place, though not of a magnitude to entitle them to so conspicuous a notice as the author has given them, and not among those on whom this unfavorable balance fell, that is, the importing merchants, but among a totally different class of traders. This fact, like the one alluded to above, our author meets in the same ingenious way, viz. he calls it in doubt, or leaves it undecided. We quote his words :

'The other assertion,' says he, 'is, that not above two or three persons extensively engaged in the importation of dry goods were among those reduced to bankruptcy. The object of this assertion is, to induce the world to believe that there was no connexion between the importation and the distress and ruin that occurred in Boston. If the assertion be true, *which I can neither assent to nor deny*, the inference is by no means warranted. The fact is directly the reverse of the inference. The failures took place in consequence of the pressure on the banks produced by the drain of specie, and the drain of specie arose from excessive importation, although the importers may have escaped the general calamity. It is impossible, I repeat, to form any precise idea how far the calamity, which has visited Boston, extends. *But it behoves every man in business to be wary, and to guard against entering into any engagements which he can avoid.*'

We must needs pronounce this a lame and impotent conclusion. What! is this the moral of the solemn elegy over our ruined commerce! This the lesson to be derived from the 'calamity,' 'the ruin,' 'the tornado,' which has visited Boston! Nothing but 'to guard against entering into engagements he can avoid.' But these reflections are *aside*. We meant only to examine how our author replies to the assertion, that the failures in Boston, in scarce one instance, fell upon the importers. He first attempts wholly to shift the state of the question; he says, 'the object of this assertion is to make the world believe that there was no connexion between importation and the distress and ruin which occurred in Boston.' We know not with whom our author may confer on these points, but we protest against having any such object attributed to the mass of those who make this assertion. They maintain that it is not to the *drain of specie*, as a part of the circulating medium, that the failures are owing. We all know that business was overdone, and too many goods imported, and where

this is the case, a loss must be incurred, to the extent of the excess of the supply over the demand. This loss will fall somewhere. On whom it falls, will depend upon the stage of the business, in which the reaction begins. If it falls early, it will be on the importer, who cannot sell his goods to the home trader to profit; if at a more advanced stage, it falls on the latter, who cannot get them off his hands in season to fulfil his engagements with the importer. But this is a very different thing from a deficiency in the circulating medium. There is money enough, but too many goods. Men have made bad speculations, and the remedy is not to prohibit the exportation of specie, still less to tax foreign merchandise up to prohibition, but simply, as plain, unsophisticated sense seems to have whispered to our author, to be prudent, and '*guard against entering into engagements.*' The circumstances, which, we assure our author, are justly stated, that the failures were confined to those traders, who stand between the importer and the consumer, and that the importers escaped the '*general* calamity,' (a singular *general* calamity produced by an excess of importation, but which the importers escaped,) are decisive of the real causes of the failures. In the first place, we say it was not a drain of specie that produced the distress, for in all the two first quarters of the year 1822, *not seven thousand dollars* were exported to England. The failures took place chiefly in May and June, and it is wholly impossible, if the cause of the failures were a drain of specie to pay for the excessive importations of British manufactures, that only seven thousand dollars of this specie should have gone to England. The specie that was exported went chiefly to India and China. Should our author make use of the hint we gave him, and say that the distress was produced by the high price of bills of exchange on London drawn on the strength of the cargoes, which the aforesaid specie would purchase in the east, and of which the avails would be remitted to London, we deny this statement; for it is certainly absurd that bills should be sold on London in May, 1822, to take advantage of remittances to grow out of exportations of specie to India, made at the same time from America. The bills for those remittances have not yet come into the market. Therefore the distress of the last summer was not caused by the drain of specie. None of the specie (except a mere fraction) was drained in the branch

of trade that suffered. We go farther, and say there was no drain at all. There was not an excessive exportation of silver from Boston, while the failures took place. In the first six months of 1822, in which the failures, we believe, exclusively occurred, there was shipped from Boston the sum of $1,204,446, of which $1,069,453 went beyond the Cape of Good Hope. In the banks of Boston, there were, in the beginning of the year, $936,427, and on the 22d of June $406,275. Thus, though $1,204,446 had been exported, $530,152 only had been drawn from the banks, and supposing the banks to have curtailed their discounts to this amount, does our author suppose that a reduction of discounts, to the amount of five hundred thousand dollars, in six months, was the cause of the failures of nine-three traders to the amount, as he states, of three or four millions? But we propose, on this point at least, to settle the question. Our author affirms that the failures in Boston took place in consequence of the diminution of the circulating medium, produced by the drain of specie. Now it needs not be said that specie, *as such*, forms no part of the circulating medium among us, except as change of a dollar. The only way in which specie can be said to form a part of this circulating medium, is in its connexion with bank notes and the necessity the banks are under, of redeeming their bills. This necessity holds a certain quantity of specie fast in the vaults of the banks, as a hostage for the redemption of the bills. It is these bills which constitute the circulating medium. Now it appears from comparing the reports of the Boston banks for January and July, 1822, that though the quantity of specie in their possession had fallen from $936,427 to $406,275, yet that in the same period, the period of greatest distress, the period in which, to use our author's glowing language, 'the tornado burst on our devoted city,' the notes of the Boston banks in circulation had been diminished from $1,231,381 only to $1,215,011, a difference of $16,370. This is the effect, on the *circulating medium* of the town, of the great exportation of specie, and a reduction of sixteen thousand dollars has produced failures to the amount of four millions!

It is true, that, in the period above named, the deposits at the Boston banks were considerably diminished, and the discounts of the banks reduced in consequence from $9,867,498

to $9,059,593. This reduction produced, for a very short period, a comparative scarcity of money, and increased the difficulty of obtaining loans on doubtful credit. As this scarcity of money, moreover, must have had the effect of the scarcity of any other commodity in demand, it is obvious that even persons in good credit must have found it difficult to get accommodation at the banks, which could not have money to loan when worth more than its legal interest. But no such distress and embarrassment, as our author would maintain, occurred. There was no actual deficiency of circulating medium for all the demands of trade. Money could not be borrowed so readily as three months earlier or three months later, but it could be borrowed still on good credit; and it could be obtained during the whole period thought so disastrous for merchandise of any kind, without any material sacrifice. We assert, on the authority of the most respectable merchants, that prices were not materially depressed; that sales for cash might have been effected without any great sacrifice; that loans to a large amount were obtained at legal interest; and might have been obtained to any desirable amount, by any one who had security to offer, for a premium of one or two per cent. during the whole period of the greatest scarcity. The very facts in which the evil is said to have its origin, prove that it could not have existed. One of the largest shipments of specie made during the year, amounting to $400,000, was made at the time of the greatest scarcity; and yet our author would have us believe that money could not be borrowed at *fifteen* per cent.

It follows from all these premises, that the failures were the consequence, not of a want of circulating medium, but of a want of property to command it on the part of those who failed. They failed, in other words, because they were actually insolvent, and not, as the writer would have us believe, because they were embarrassed for the moment. We have the best authority for saying, that, except in a few of the instances and those of no great magnitude, all the individuals, whose names go to swell the alarming list, were completely insolvent, independently of any embarrassment produced by the scarcity of money.

It is of course impossible to account for all these failures, without entering into the history of every single case. They

arose from a variety of causes. A general cause was over-trading. The market was filled to repletion, the profits on some branches of trade became exceedingly small, on others there was an actual loss. Those, of course, who traded on borrowed capital, that is to say, on no capital, were ruined. Misfortune and accidental losses in some, improvidence and want of foresight in others, contributed to the same effect; and all the causes enumerated above, to which failures in commerce may be attributed, had a share in producing those which took place in Boston the last summer. It should be remembered that very few failures had happened among the merchants of Boston for many years. The great facility of obtaining money, in consequence of the abundance of capital which sought an investment, even at a low rate of interest, where the credit was good, enabled those on the verge of bankruptcy, to postpone the day of failure, which, but for these circumstances, would have arrived long before. Thus nearly all the bankruptcies of several years were crowded into the space of a few weeks; and their occurrence within that period no more proves a disastrous and ruinous scarcity of money at that time, than their not occurring in the former period proves a stagnation of business, and a treacherous superabundance of capital. At any rate, the bankruptcies were not occasioned, though the time of the failures may have been determined, by the exportation of specie and the temporary scarcity of money; for the individuals who failed were for the most part insolvent before the scarcity occurred, and the specie would not, of course, have been exported had it been actually wanted for the purposes of a circulating medium here, in paying the debts of those who had merchandise, stocks, real estate, or other property, to give in exchange for it. We could not have believed that four editions of a book could have been published to prove, by the ninety failures in Boston, that the distress arose there from the exportation of specie to pay for the ruinous excess of European imports, with these three facts before the world; first, that only seven thousand dollars were sent to England from Boston; secondly, that the circulating medium was diminished only sixteen thousand dollars; thirdly, that out of the ninety-three failures, scarce one was of an importer.

4. We proceed now to a singular document, the debts *of the*

United States to foreign countries, stated by our author to amount to about $60,000,000, as appears from the following table:

'Government stock held by foreigners (Sept. 1822.)		$27,856,152
Stock of the United States' bank, do. (Oct. 1822.)		3,189,400
		$31,045,552
These alone can be stated with precision. It now remains to estimate the other items of debt.		
1. Commercial debt standing previous to the present year, supposed,	$15,000,000	
2. Actual difference between imports and exports of nine months for eight ports (for 1822.)	17,000,000	
3. Supposed difference of the remaining ports and fourth quarter	3,000,000	
4. Stocks of individual states	2,000,000	
5. Stocks of state banks, insurance companies, &c.	3,000,000	
6. Supposed loss on cotton, flour, &c.	3,000,000	
		43,000,000
		74,045,552
Deduction of losses by foreigners on consignments sacrificed at auction, &c.		5,000,000
		$69,045,552

This may be a few millions erroneous, but it is as likely to be above as below reality.'

A table of errata appended to the pamphlet, however, tells us that in the items 2, 3, 4, there is probably an overstatement of 3 or 4,000,000 of dollars. Our author plays with his millions; and whether out of a sum of 22,000,000 he is three or four millions out of the way, that is, a fifth or a seventh of the sum, seems to him a matter of indifference. The truth is, the amounts are imaginary. Our author might as well have put the debt of our merchants before the last year at $45,000,000 as at 15,000,000. His system would make it as we have seen above, amount to $270,000,000. In the three next items of 22,000,000, though 17,000,000 of it rest on customhouse returns, furnished by the politeness of collectors and deputy

collectors, an overstatement of 3 or 4,000,000$ is confessed; and why not say 7 or 8? In this guess work of millions, why be so parsimonious? The amount of the excess of the specie exported over that imported is ascertained by our author from information 'furnished chiefly through the politeness of the secretary of the treasury, and completed by the kindness of the collectors of Boston, New York, Philadelphia, Providence, and Baltimore.' This amount is stated, on page 24, to be $8,661,109. Here, however, notwithstanding the politeness of one secretary, and the kindness of five collectors, our author informs us in his *errata*, that there is an overstatement of $1,226,375, nearly a seventh of the whole. How the error arose, or where it resides, he has not told us. The figures which he gives us are rightly cast. He tells us, that 'these errors do not materially affect the general conclusions, drawn from the table to which they belong.' But how can it be said that an error of $1,226,375 does not affect the conclusions to be drawn from an amount of $8,661,109. As the excess of the amount of specie exported over that imported, which in the errata is stated to be $7,434,634, is to be deducted in this account of the debts of the country, and as our author acknowledges an exaggeration of 3 or 4 millions on some other items, we have these two sums or 11,000,000 to deduct from this balance.

Five millions he deducts himself for the losses of the foreign exporter on the consignment of goods sacrificed at auction. Thus we have 16,000,000 to deduct from 43,000,000, reducing the commercial balance to 27,000,000, by our author's own data.

But we have more serious exceptions to take to this statement, than that of exaggeration in the amount. It is delusive in its nature. It is formed, we will not by any means say on principles, which the author knows to be false, for, though he is pretty free in his use of this uncourteous language, we do not wish to follow him in it. But it is founded on principles, which all who have within fifty years written on these subjects have proved to be erroneous, and which we think can be made to appear so to a common understanding. Our author states the excess over importation, in the three first quarters of the year 1822, at $17,000,000. This excess is of course obtained from the customhouse returns, which exhibit the domestic price of our exports, and the invoice price of our imports.

But it is plain that this is delusive in many ways. Our foreign trade is the exchange abroad of our exports against the articles we import. We pay for the latter with our exports, not at the price at which these are here estimated, but at that which they will bear abroad. This must be greater than the price at home, by the fair profit on the capital employed in the trade; and of course a part of the return cargoes of the imports, is that profit. Our readers already perceive that our author's $17,000,000 excess of imports over exports, must undergo the great reduction of at least interest on the capital vested in those exports, which cannot be less than several millions of dollars.

But a much more important reduction still remains. The excess of our imports is to pay not only the difference of the foreign and domestic price of our exports, that is, the immediate profit on the sale of the articles exported; but it is to pay freight, to keep our immense tonnage in repair, to pay the wages of the shipwrights, chandlers, riggers, and the thousand other mechanics, employed in the construction of our shipping; and it is to pay the seamen's wages, which form the maintenance of the wives and children of seamen. All these prodigious charges are to be deducted from the excess of our imports over our exports. If the merchant brought back a value no greater than he sent out, he would of course not only not be richer, but much poorer than he was before making the voyage. He would not only make no profit, but he would lose the interest of his capital, the wages of all those whom he employs, and the deterioration of his stock. These, however, in a good business must all be paid. And of course they must be paid by bringing back more than he carried out;—by the excess of imports over exports. All these great sums are accordingly covered by that excess, which our author makes so ruinous, and which in reality is the very profit of the enterprise. The excess which is so pertinaciously said to be liquidated by an exportation of specie, is the reward of thrift, the enhancement of the exports in a foreign market, and the value added to them by the industry and skill of our citizens. And these are the precious doctrines of our author and his school! An excess of value imported, brought home, which has built up our American navigation and with it our American navy; which has reared Boston, New York, Philadelphia, and Baltimore, from inconsiderable ports to great capitals; and which has

spread comfort, prosperity, and wealth through all the channels of the country, is called ruinous.

But we have a few more remarks to make on this point. The customhouse balance thus applied is still more deceptive than this. A very extensive part of our industry is in the freighting business. The outfits of the vessels that proceed from the northern parts to the south are small, their freights are ample. These are invested abroad in some form or other, and either come home in the shape of imports, or pay by bills of exchange for imports. The whole amount of the latter accordingly goes to swell the article of imports, and nothing offsets it in the export account. Thus all the industry, skill, and capital of the whole freighting business of the United States, go for nothing, absolutely nothing, with these warm friends of national industry. To make this matter plain to every capacity, we shall borrow a few words from the intelligent editor of the Portsmouth Journal.

'The great fallacy of arguments drawn from the custom returns will be apparent from considering only one branch of the trade of this town, namely, the freighting business. In the course of the last year we have had 27 ships and 12 brigs employed in this trade, several of which have made two voyages. It will, therefore be perfectly within the truth to make a calculation of forty voyages to the year. These vessels generally took with them hay and lumber sufficient to pay their port charges in the southern states, say $100 each or $40,000 the year. They receive upon an average £1000 each in Europe, or $177,600. Deducting from this sum their port charges in Europe, they brought home in salt and iron, or left behind to be brought home by others, $150,000. The whole of this sum appears on the books of the customhouse as imports, without one cent of exports to balance it.'

This is an example on a small scale. Mr. Seybert tells us, on the large scale, that 'the American tonnage employed in the foreign trade from 1795 to 1801, both years included, amounted in the aggregate to 4,544,314 tons, or 649,187 tons per annum. The profits on it, if calculated at the rate of $50 per ton, for the average annual value of freight out and home on voyages of every description, must have produced for the freight alone 32,459,350 dollars per annum. The estimate for the gain of freight is a moderate allowance; intelligent merchants have calculated it as high as seventy dollars per ton on voyages of every description.'*

* Seybert's Statistics, p. 281.

There is an example, which still more strikingly shows the absurdity of these balances. A well known establishment, in the state of Maine, exports annually a quantity of ice, which in our northern latitudes is produced exceedingly cheap, for which it receives in return colonial produce, it has been said, to the amount of $100,000. But this beautiful creation of value goes for nothing in our author's view. For nothing, did we say? it is a balance of $100,000 against us. In short, there are some things so plain, that, however pledged or tempted to deny them, one feels awkwardly when challenged directly to the point. We would therefore ask our author, how he thinks the great accession of wealth in the country has arisen? The houses in our cities—the ships in our ports—the expenses of our government—have surely cost something. The balance of trade has *always* been against us according to his notion of that balance; and we should be glad to know how, in a trade ruinous from the beginning, so much property has been created, distributed, consumed, or accumulated? Let him not say that we are now living from the profits of better times. We think he cannot point out more than one year, since America was a nation, when this balance has not been vastly against us according to his explanation.

We shall not wholly dismiss his account of the debts of America to foreign nations, without remarking on one other item, which amounts to thirty-one millions or a half of his whole sum of sixty millions. Nearly all of it is public stock owned by foreigners, and for which of course interest is paid. The stock has been created at different periods in our country's history, but principally to pay the expenses of the revolutionary and the late war. As our author considers the late war to have had a very happy effect on the industry of the country, he cannot quarrel with the objects, for which the loans were raised. In other words, he must allow that these thirty millions, which we owe to foreigners, were borrowed for great national ends. This consideration is enough to show how ungracious it is to throw this sum in, to swell the amount of the debts of the country, and to add it up into one mass with the balance of trade. But this is not all. This large sum is really a loan of so much capital to the United States. Having been raised for the purposes of war, its value was of course consumed in the service of our country; and the $30,000,000 owned abroad accordingly stand in the place of and represent that amount of domestic capi-

tal, which must otherwise have been destroyed without reproduction. Is it then to the disadvantage of the country that so large a portion of the funds requisite for its wars have been furnished by foreigners? On the contrary, is it not an addition to its resources? Besides, what has this to do with the question of excess of importation? Our author surely does not think, as he seems to do by introducing it, that, because stocks are sometimes sent to Europe as remittances, therefore the debt was created for that object? The merchant A, who sends stock to London to pay for goods, buys it first of B at home; henceforward B will possess the value given him by A for the stock, and all the profits upon that value. The interest of the stock is paid, it is true, to the foreign stockholders, but it is not therefore sent out of the country; for B, who sold the stock to A, is receiving interest on the purchase money; and the foreign stockholder receives, not an interest drawn from our country, but the profit on the foreign goods, in payment of which he received the stock. In short, in every case, the foreign creditor of government sent a value, at some time or other, to America, which was regarded as an equivalent by America; and, while we pay the foreign stockholder interest on the one hand, on the other, we have our profit on that equivalent which was given us for the stock; so that it is wholly immaterial, whether our stocks be held abroad or at home. If held abroad, the interest goes; but the profit on the value paid for them stays. Or if the value of the loans, on which the public debt is founded, be regarded as wholly consumed and destroyed, then the thirty millions owned abroad saved the destruction of that amount of domestic capital. The interest of $30,000,000 goes abroad; but the profit of the $30,000,000, for which this was substituted remains at home. Stock held by foreigners stands on precisely the same footing as stock held at home.

In pursuing the subject in his second chapter, our author treats of the high rate of bills of exchange, and regards it as another evidence that the balance of trade was totally against us. He makes no allusion to the fact, that when exchange was here at a premium of ten per cent., dollars in London were at 4*s.* 1¾*d.* and of course that exchange was cheaper than silver.* That it must have been so, one would have

* See this subject very ably stated the last winter in an essay in the Portsmouth Journal.

thought, must have struck him, from the fact so often alluded to, that no specie was sent to England. Nor does he give any credit for the effect of this same high rate of exchange on the sales of all American produce in England; whereas it is plain, that for exchange to be at 10 per cent. premium, is equivalent to an advance of 10 per cent. on the price of our exports in the foreign market. In fact the dark side only of every thing presents itself to his mind, and the terms of extravagance, with which that is exaggerated, are sometimes amusing. Thus, in speaking of the ill concerted speculations, in the stock of the bank of the United States, which took place last summer, he maintains that the fall of that stock from 109¼ to 98 in the course of five days, was a reduction 'almost without a precedent, except in the case of the Mississippi and South sea schemes.' Now, without observing that in ten days more the stock had risen again to 102, we would only expose this exaggerated comparison of a change in the price of an article of 11 per cent. in five days, to the South sea scheme. Scarce an article of extensive consumption, but varies as much, and often in consequence of the arrival of one vessel. For stock of the United States' bank to sink in five days from 109 to 98, is for flour to sink from 6 dollars to 5,34 cents; or coffee from thirty cents to 26⅔: a considerable reduction certainly, but as much like the South sea scheme, as a cup of coffee is like the South sea.

Having in the first part of his work set forth the evils of the country, viz. excessive importation, drain of specie, stagnation of industry—and impending ruin, he proposes his remedy; which is, the encouragement of domestic manufactures by an increase of duties on importations. This topic is so ably treated by all the writers on political economy, particularly by Say, that we forbear to engage in its discussion. We would only repeat a remark which we have already made, that whereas our author, by his too often repeated sneer at Smith, affects to ascribe to him alone the doctrines which he is combating, there is nevertheless not an author of repute, who does not follow Smith on this subject.

5. Our author urges upon us the encouragement of domestic manufactures, by the example of the prohibitory tariffs of almost all the nations of Europe, and, as a strong additional inducement, tells us that Russia has changed her system *three*

times in *six* years, laying heavy duties in 1816, whereupon her manufacturers grew rich; repealing them in 1818, whereupon they were ruined; and reenacting them in 1822, on the strength of which they will doubtless flourish again. And these are the examples for us to follow; these disastrous fluctuations, productive of greater evil than even the worst permanent policy! It is no small argument for those, who oppose the scheme of violent congressional interference to direct the inhabitants of the country how they shall employ their capital and their industry, that from the nature of the case, and particularly in a government like ours, where political parties are liable to continual variation, the most ruinous caprice may be brought into action from session to session of congress, and the most important investments and extensive enterprises have no other security, than that a majority in congress may continue of one mind.

To the prosperity of the manufacturing interests of our country we are most hearty wellwishers. America has reached a point, where they ought, and where they will be cultivated, nay, where they *are* cultivated in full proportion to any other branch of industry. We simply protest against the destruction of our commerce, and the imposition on the whole community of heavy taxes, first in the shape of higher prices, and then in the necessity of an excise, and all for the sake of forcing our manufactures to a premature ripeness. The very reason, the only reason, which leads foreign nations to forbid the importation of articles of external manufacture should decide us to continue in our policy of admitting them. In all the states of Europe, exceedingly artificial and complicated systems of mutual prohibition have grown up from various causes; such as national rivalry, financial necessities, the colonial system, and theories once believed sound, but now, as theories, universally exploded. These systems of long standing could not be overthrown, without vast sacrifices of fixed capital, which no government would dare, which none perhaps would be justified in attempting. Adam Smith, notwithstanding all that has been said against him, no where recommends the general and speedy introduction of the system, which he has unanswerably defended; but, on the contrary, has repeatedly urged that all changes should be exceedingly slow and gradual. On this ground alone the restrictive and prohibitory systems are justified; on this ground they are justifiable in old countries, where the very

idea of a sound policy is abandoned, and the only question is, what potent drug, what political *eau médicinale*, will longest sustain the frame without producing a worse palsy than it is meant to avert. In our country, besides all the considerations in favor of the liberty of employing one's capital and industry to one's mind, is that very additional argument, by which the opposite system is defended in Europe. A considerable proportion of the capital of the country is commercial. Acquired in commerce, it has been continued in the same pursuit. A tonnage valued at $70,000,000, the real estate in the seaports, which we will not undertake to put into figures, the industry of those who have been brought up to trades connected with commerce; all these united seem really to present to us a mass of interests something too important to be sacrificed by an act of congress. To talk of encouraging manufactures by 'protecting duties' is an absurdity in language, with respect to manufactures which do not yet exist in the country, and which would not have been attempted for fifty years, but for the late war. The *existing* interest needs protection; and we repeat, that precisely those arguments used abroad to defend their restrictive systems, may be forcibly employed here against the prostration of our commerce. To make this more clear, we will suppose that, by some peculiarity of things, America had, from the first, grown up a manufacturing people; that we really fabricated a great portion of what we consume; that these manufactures had resulted in an unexampled prosperity—a doubling of our numbers in a ratio that amazes the world, a growth in wealth, improvement at home, respectability abroad of the most extraordinary kind; and all this without great protection on the part of government, but by the mere facilities of our soil, and industry of our citizens. Suppose that, while things were in this state, the inhabitants of the seaboard should demand heavy duties to be laid on every article manufactured at home, for the sake of producing a demand for foreign merchandise, and in order to be able to bear the expense of digging away sand bars, erecting lighthouses, and in every other way removing the obstacles to navigation. Can imagination do justice to the clamor and trouble it would excite? Would the government, that broached such a policy, ever convene again in Washington? And yet this is fairly the case with the pretensions of our author and his school.

Our limits do not permit us to go into the main argument of the comparative productiveness of manufacturing and commercial industry, but we cannot but correct one false impression of very general prevalence. It is said, that, by importing an article of consumption, we pay to foreign workmen and capitalists the profits on its production, whereas, if it be manufactured at home, we pay our own capital and workmen; and that therefore in the former case the industry of foreign nations is encouraged and the wealth of foreign nations increased, and in the latter, our own. If we mistake not, there is a fallacy in this reasoning, which has not yet been distinctly pointed out; though in fact it is felt and condemned under many other forms. It arises from confounding the two kinds of production, that of the foreign artist, who fabricates the article, and that of the merchant who brings it home. As far as the interests of America are affected, the American merchant is the producer of what he imports. Instead of building a factory, he builds a ship; and invests his capital, not in spindles and looms, but in an outward cargo. On his return he brings the article wanted into the market, by a process which, in its effect on the national wealth, is precisely similar to that of the domestic manufacturer. Suppose that British dry goods, instead of being costly articles in England, were productions spontaneously accumulated on a desert coast, and that the merchant was obliged merely to go and gather them up; but that the length and danger of the voyage made the goods on their arrival as dear as they now are, in the existing state of things. Here it is plain the merchant would be the sole producer, and the only question important to the nation would be, whether the goods were worth the expense of the expedition. This is no fictitious case; the whale fishery corresponds with it identically; and supposing the price to be the same, it would be indifferent, as a question of national wealth, whether we bought the oil of the British, or dragged it from the deep. When the merchant therefore brings an article of English goods into the market, he has converted his capital, skill, and industry into an useful object of consumption. He, his shipmaster, ship-builder, rigger, rope-maker, duck-weaver, crew, with all their wives and children, produce and manufacture the article *quoad nos*, and the consumer pays for it. The price that he pays is the full price of its production to the merchant,

ship-master, &c. If the domestic manufacturer produces it, the consumer pays the price to the proprietor of the factory, to the machinist, the weavers, &c. who fabricate it. In both cases, it is a price paid to American capital, industry, and skill; and even our author would probably allow that, of the two American manufacturers, we have a right to employ the cheapest and the best.

But it may be asked, if it is not the American merchant who pays the foreign manufacturer, who does pay him? He is surely paid by some one, and that to profit. To this we answer, that he pays himself, as every person in prosperous business must. Profitable trade supposes that both parties gain; that is, that both parties get a profit on their capital, and wages for their industry. And both are enabled so to do, because a new value is produced. By this new value the producer is paid; if he consumes it himself, he is paid in his preserved life, continued health, and increased pleasure. If he produce more than he consume, he exchanges the surplus for something else, which he can consume, either unproductively in gratifying his wants, or productively by adding to his capital. In either case he pays himself. Two traders are enabled thus to pay each himself and yet not injure the other's bargain, by the circumstance that their goods severally have acquired an additional value, by coming to a market, and being converted from a surplus into an article of demand. It is mutually profitable to them to exchange; each has gained value by the barter. There is therefore no more propriety in saying that in the importation of British goods we pay British industry, and employ British capital, than that the British employ American capital, and pay American labor. It is clear that the goods represent an equal amount of capital and industry in the possession of the American as of the Englishman. Supposing the purchase to have been judicious, it was equally for the interest of both. The Englishman, in the price for which he sold it, got interest on his capital and wages on his labor; and the American will do the same:—neither, because he has overreached the other, neither at the expense of the other; but each, in the increase of value by exchanging articles, respectively more wanted by the other.

But it will still be urged, that, although the American importer may not sacrifice any value of his own, to pay the foreign

manufacturer, still, by trading with the foreign manufacturer, he confers on him the benefit of a demand for his fabrics, and deprives his own country of the same benefit, and that thus foreign capital and industry are encouraged at the expense of the domestic. This is so plausible a view, that many persons, by no means of the manufacturing party, assent to it; and plead only in practice against it, that existing mercantile interests are entitled to protection. The view, however, is wholly without foundation, and it is capable, we think, of proof, that domestic capital and industry are precisely as much encouraged by importation as by manufactures. To manufacture an article instead of importing it, may employ capital in a different way, and create a demand for a new *species* of industry in the place of an old one, but never can make the accession of a particle to either, beyond the fair progress of society at large. When the importer purchases a foreign fabric, he gives for it a product of American capital and industry, which is regarded as an equivalent. No matter in what form this product exists, nor what channel it may have passed through. It may be potash, or tobacco, or cotton, or dollars. The importer receives nothing in Liverpool, for which he does not pay in the produce of American capital and industry, of which, of course, the costs of the voyage make a part. Every bale of goods bought, therefore, represents its full value of American industry, labor, and skill in some form or other. No part of this value goes to pay the British artist; because, in that case, the same thing would be twice paid for. The American consumer pays the cost of producing the article in the American market; and the British consumer, who receives and consumes the tobacco, cotton, specie, or potash, which were given for the article, is the individual who in reality pays the British artisan. At any rate, as the American produce, including the expense of transportation, is an equivalent for the value of the goods for which it is exchanged, if the American merchant encourage British industry, the British manufacturer encourages American industry to precisely the same amount; to an amount which the parties themselves judge to be the same, because they exchange the results voluntarily with each other. Accordingly, a thousand dollars invested in importations, encourages American industry, and pays the interest on American capital to its full amount; and, if the business be prudently

managed, so that the importer shall keep his fixed capital unimpaired, defraying all the charges, and yielding a fair profit (and this must be done in any business, or that business will be abandoned for a more profitable, if there be one), this thousand dollars has been employed as advantageously as possible to the country. No matter where the scene of action has been laid, in the broad plantation, the deafening stories of a factory, or on the stormy sea. A thousand dollars can put in motion only a certain quantity of labor; and, except where protected by a monopoly, can of itself acquire but the average profits of value possessed and invested in other ways, in the same community.

We are surprised that Dr Seybert, who in every other respect has soundly stated the doctrine of the balance of trade, should here have deserted his own principles. He tells us that the balance in favor of England is actually an unfavorable balance to us, because our imports consist in manufactured articles, and that twenty millions and a half are annually consumed by America, on which we pay profit to England; adding in a note, that the raw material is estimated to increase seven fold in value by being manufactured. This fact, however, does not bear on the question. When the American merchant buys the English manufactures, he exchanges value to their amount. Is the invoice of dry goods worth a thousand pounds, he gives for it a thousand pounds' worth of products of American industry and capital; be it gold, silver, exchange, tobacco, or cotton, the principle is the same. The parties buy of each other.

But it will be said, that by encouraging domestic manufactures, we bring into operation more industry in the production of the same article, and that therefore domestic industry is more encouraged. This fact, in most manufactures, is true; but the only consequence of this truth is, that, without serving any one, not even the manufacturing interest, the community is made so much the poorer. To employ more industry in producing the same result,—to work four hands in order to get into the market what might otherwise be got by the labor of two, is merely destroying so much productive industry, and making the community so much the poorer. This is immediate-felt in raising the price; and the direct consequence is, that the country is not enriched, but impoverished; it pays more for the same thing, fewer persons of course will consume it,

and those, who consume it, will do so at a greater sacrifice. But the producer is not benefited. It is no advantage, on the contrary, it is a disadvantage to the producer to enhance the cost of production, as this infallibly diminishes the consumption. If more industry is employed in the domestic manufacture, than in the foreign importation of the article, then more American capital and American labor are consumed for the production of the same effect. And this is an evil.

It is an evil to the farmer. The manufacturers have attempted to make common cause with the farmers, and represent the latter as saying 'we will give you to eat, if you will give us to wear.' But the farmer wants various kinds of clothes, and something besides clothes. He wants cloth of one manufacturer, linen of another, shoes of a third, tools of a fourth; it is for his interest to get each as cheap as he can. It is for his interest to give as little wheat as possible for his coat, that he may have the more to spare for his shirt; and, again, as little as possible for his shirt, that he may not be stinted in his tools. If he have to pay his neighbor, the manufacturer, four bushels of wheat for his coat, when the merchant would have furnished it for three bushels, or the value of three bushels, in proportion to the difference, he is able to furnish himself with fewer comforts,—he is so much the poorer.

We wonder, moreover, that this argument has not suggested to the manufacturers the immediate effect which their policy would have on the export trade of the United States. Millions of dollars of our produce are now called for by Great Britain alone, and paid for in her produce. To cut off our trade with her would be to sacrifice a considerable portion of the wealth accumulated in our country by this branch of industry. Our author, it is true, murmurs at the British, because they will not take our wheat. But why is he not contented that they take our tobacco and cotton; or what would it avail us to have the right of exporting wheat, if, by prohibiting their manufactures, we refuse the only thing it is for their interest to pay? In fact, our author's intimations amount to this, that because we cannot find a market for every thing we produce, it is not worth while to have a market for any thing.

In the present state of things in this country, we hold this course of argument to be unanswerable. It is decidedly for the interest of every individual consumer in a free communi-

ty, that every article of consumption be brought into the market as cheap as possible. It is therefore the interest of every consumer in America, that every article be produced in the market, in such a way, that it may be procured for the least value in exchange. With respect to the consumer, therefore, it is not for his interest that any manufacture be attempted, in which more capital and industry will be required, to produce the same, than would be required to produce it in the way of commerce. The capitalist, considering him as undecided whether to invest his capital in manufactures or commerce, has the same interest to invest it where the least capital will produce the greatest result. Prospectively, therefore, American capital can be interested to carry on no manufacture, where the cost of the imported article is less than that of the manufactured. For manufacturing capital, already in existence, we would certainly allow the claim to reasonable protection. It ought not to be forgotten, however, what a prodigious bounty —that of the restrictive system—was paid, by the commercial capital of the north, and the agricultural capital of the south, to the manufactures set up during the war; and it is not without disgust, that, under the head of general remarks in the digest of manufactures laid before congress at the last session, we perceive the decline of prices since the war to be often spoken of by the owners of factories as an injustice to the manufacturer.

As it is for the interest of the consumer that every thing should be cheap and abundant, instead of the complaints which we often hear, that our industry and capital cannot sustain a competition with the English, we ought to perceive that, so far from being injured, we are served and assisted by it. There are writers among us, who appear to think that human happiness consists in working hard to produce; whereas it consists in consuming. The miserable serfs, who, in the smoking and sulphurous forges, the dreary coal mines, and the stunning factories of England, are working from twelve to sixteen hours a day on wretched wages, are toiling for us. They labor to lessen the amount of American industry which it is necessary to pay for the articles imported.—Their competition? it is a competition to put it into the power of the American farmer, and the American mechanic, to consume more at less expense, and thereby to become richer.

On the general question of encouraging manufactures by

duties on imported articles, a question on which appeals have been importunately made to the popular feeling, it ought ever to be borne in mind, that it is a question immediately of capitalist against capitalist. Those who go into manufactures with large capitals will command and fix the market; those who engage in this business with small capitals, or none, will be in precisely the same want of encouragement then as ever. British competition may be shut out; but the far more powerful competition of domestic capital, and all the advantages which it commands, will be called into existence. Moreover, the competition among capitalists themselves would sink the profits of the most successful manufacturing establishments to a fair average level with other employments of industry and capital, so that the only effect on the community, in this respect, would be, that so much capital would have been diverted by legislative interference from one pursuit to another; and that the public would be the sufferer in all the difference between the eligibility of the two investments, that is, in all the amount of duties imposed to produce this diversion.

With regard to the effects on the population; it may be a question harder to decide, which employment of capital is most favorable to the growth and increase of a hardy, vigorous population. As advised at present, we are by no means persuaded that the commercial investment is not as favorable as the manufacturing. We think but meanly of the average morality of sailors; but we do not know but it equals that of the inmates of factories. Besides, the ships' crews are the smallest part of those whom commercial capital employs. Tracing into all its branches the effect of either investment on society, we believe it will be found, that those who are supported and fed by commerce, are as moral as any other part of the community.

As to the numbers which are respectively fed by commerce and manufactures, we believe that great mistakes both of fact and principle exist. Manufactures gather at first a greater visible multitude together. A large building or buildings are filled with men, women, and children, and a little village is formed by their dwellinghouses. A town almost grows up in a season. But this is rather an apparent than a real effect. The factory is usually built on an unfrequented spot; and the nature of the pursuit condenses more of the labor upon the one

point where the buildings stand. The operations of commerce are lost in her own crowds. A China ship and cargo are as costly as Waltham factory; but the ship is not to be distinguished among the forests of masts at the wharfs, nor can the multitude, which have in some way or other been employed in connexion with the vessel and cargo, be pointed out and enumerated, scattered as they are throughout a large city, nay, throughout a country. We think that in an open trade, and in a free country, taking one pursuit with another, from the beginning to the end, the same capital puts in motion about the same quantity of labor, directly and indirectly, and to about the same profit. Did our limits admit, we could in various ways make this probable. It is ably enforced by the intelligent editor of the American edition of Say's Political Economy. In this respect, therefore, we think there is an error in fact, in supposing that manufactures employ more labor than commerce, tracing each from the beginning to the end of its operations. But the error in principle is still more apparent. It is no recommendation, but, on the contrary, an objection to a pursuit, that it employs more men, more labor for the same end; else, all machinery, instead of enriching, would impoverish the nation. Many machines have been invented which do the work of hundreds, yea, of thousands of human hands. It is acknowledged that they are one great cause of the vast product of national wealth where they exist. But they have the effect to employ less labor to produce the same value; and if it be a recommendation of domestic manufactures, that they employ more labor to produce the same article than commerce employs to import it; we should be glad to know, how a spinning jenny, which reduces nine tenths the amount of industry required to produce an article, can be the source of wealth? We should be glad to know the difference between a ship and all other kinds of machinery, that makes a reduction of the amount of labor, necessary to produce an article, ruinous when effected by the employment of a ship; and salutary when effected by the employment of double speeders and carding machines. In fact, it is the interest of every consumer, and that is synonymous with every man, that every thing which he is to consume should come into the market as cheap as possible; and this is to be effected by producing it with as little labor and expense as possible.

When we witness the zeal, with which the cause of manufactures is pleaded, and duties on foreign importation are demanded, we cannot but ask, with what justice so large a portion of the agricultural, the commercial, nay, the manufacturing capital and industry of the country is to be forced out of the channels, in which it has flowed so long and so profitably, for the sake of providing a bounty for those branches of industry, which, were they profitable, would need no bounty? To destroy the importation of foreign manufactures would, as its first effect, be to reduce very low, if not to annihilate the market for our great southern staples. It would be to force the South Americans and the Hindoos to supply the British market with cotton, which they soon would be able to do, if the British manufacturer were unable to pay for our cotton with his fabrics. Let it not be said we should at home consume all the cotton, which we now export. On the contrary, if it be correctly maintained that in general raw materials increase seven fold in value by manufacture, we should consume only one seventh of what is sold in England. We should be committing therefore on a large scale, the same error, which England has committed on a small one, in forbidding the importation of timber from the North of Europe. She has injured her manufactures by taking away a market from them, and she provides timber for her navy at a greater expense. But this is not the worst, that would happen to us, by building up manufactures at the expense of our commerce; we should destroy the most flourishing *manufacture* now existing in America. After the little domestic manufactures, by which single families supply themselves with the necessaries of life, and small mechanics and artisans provide the most essential commodities for their villages (which, though insignificant in any one instance, probably amount, in the aggregate to one hundred millions of annual value, throughout the United States) next to these, and far before any of the great manufacturing establishments of cotton, of wool, of iron, or of glass, we place *the manufacture of ships.* The tonnage of America in 1810 was estimated at seventy-one millions of dollars in value; two thirds of which were employed in the foreign trade. With the exception of a considerable part of the sail cloth, and an inconsiderable sum for bunting for colors,* this vast amount of value

* Tench Coxe's Statement of the Arts and Manufactures of the U. S. of America, p. xix.

is produced out of the growth of our own soil, and of our own forests. On an average of all the years from 1803 to 1816, Dr. Seybert found,* that the annual amount of *new* tonnage in America, was 102,811 tons, exceeding that of the British empire. This gives an annual *manufacture of tonnage* of five millions of dollars. This branch of *manufacturing industry* therefore must be, two thirds of it, sacrificed, and to promote *other manufactures.* And yet this vast amount of manufacturing industry is employed and paid by commerce, only in the very first step of her operations. This annual bounty of five millions of dollars paid to the forester and woodman, to the iron-founder and smith, to the carpenter and shipwright, does but bring the vessel to the quay. Seventy thousand seamen, with their wives and children, are next to be clothed and fed, or, in other words, more than nine millions of dollars are paid annually by commerce, in the single article of wages to seamen, at the rate of eleven dollars per month. As no account is here made of the superior wages of captains and officers, this estimate is quite within bounds. The subsistence of the crews, at the rate of twenty cents the man per day, amounts to over five millions of dollars per annum. And thus, in the pay and sustenance of seamen alone, fourteen millions of dollars are annually expended by the commerce of this country, in the wages and subsistence of the laborers it employs. Combining this with the five millions annually required to keep the American tonnage in repair, we have nineteen millions annually disbursed by the *ship manufactory* to the laboring classes of the community. Here we stop, though it is, as we have said, the first stage of commercial operations. We say not a word of the industry required to prepare the outward cargo, or vend the return cargo, each of which is put in motion by commerce, the former to the enriching of the great agricultural states, and the latter resulting in the growth of the great commercial cities. We say nothing of the service rendered to every individual, however remote or distant he may be, who is enabled by commerce to take advantage of the crowded population, the accumulated capital, and the intense competition which prevail in foreign countries; and thus purchase the most useful and necessary articles at the cheapest rate. We say nothing of all these, but we rest on the simple preliminary fact, that the commerce of this country,

* Seybert, p. 310, 311.

in the outset of its operations, without reckoning profit on an ounce of produce shipped for exportation, pays to the hard working industry of the country nineteen millions of dollars annually. When it shall be proved that any or all of the manufacturing establishments of the United States do this, it may be argued with some plausibility that they deserve to be built up at the cost of our commerce. Meantime a moment's reflection on this vast amount, which is paid by commerce in annual wages to those whom it employs, abundantly shows, that in commercial enterprises, comparatively speaking, there is a vast consumption of labor, and a small one of capital. To erect any manufacturing establishment, with tolerable prospects of success, a hundred or two hundred thousand dollars are wanted in the outset. There is not probably an American merchantship that floats worth forty thousand dollars, and the great mass of our navigation consists of vessels, which are built and fitted for sea, at a cost of from four to twenty thousand dollars. With this small outfit, the globe is circumnavigated, and the fertility, the cheapness of labor, the peculiar staples, the accumulated capital and improved arts of every country, are laid under contribution to enrich ours. Certainly this is the circumstance, which has caused our commerce to flourish so much beyond our manufactures. Not a want of capital, as some writers allege, but a want of capital in those great masses, which are required to set up manufacturing establishments. Capital, instead of being scarce, is abundant in this country, if by capital we mean such an amount of value as enables a man to undertake and prosecute an independent business. But it is in small amounts; like the orphan's cup in the Iliad,

Χείλεα μέν τ' ἐδίην', ὑπερῴην δ' οὐκ ἐδίηνεν.

Without reflecting, that the existence of capital in small and widely diffused portions is, like the statute of distributions which is one great cause of it, not a disadvantage, but the happiest feature of our political condition; without reflecting that our progress is so rapid, that, notwithstanding its perpetual division and distribution, capital is already gathering itself into masses, competent to the most expensive undertakings; our manufacturing writers have hit upon the notable device of raising a capital to carry on this business; and the burden of all their writings and addresses is, 'we wish to raise a capital large

enough to carry on a woollen factory, and we call upon every consumer in the country to pay us twenty cents on every dollar he consumes, toward raising this capital, of which we stand in need.' Such claims need but be plainly stated.

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ART. XI.—*Notice sur le Zodiaque de Denderah, par M. J. Saint-Martin, Membre de l'Institut.* Paris, 1822.

SINCE the days of the Romans, who plundered Egypt of obelisks and transported whole colonnades of marble pillars from Italy to Constantinople, this magnificent kind of robbery never flourished more than at the present moment. We laugh at the simplicity of the Turks, who fancy that the European traveller covets their classical ruins for treasures of gold and silver contained in them. But perhaps the zeal with which every remnant of other ages, that does not bid defiance to axes, levers, and ropes, is removed to Paris and London, is as ridiculous. Not seldom is a ruined edifice, if we may use the expression, again ruined by these ruthless virtuosos. In an ancient temple, which has suffered only from the hand of time, or the disasters which the chance of ages has brought upon it, there is often much more beauty, than it could have possessed in its best estate. Few new buildings are remarkably attractive, and scarcely can a ruin of two thousand years be otherwise. Many of the little temples at Rome, now among the most prominent objects of antiquarian interest, must, when first erected, have been buildings of no importance or curiosity. But their partial preservation through ages, that have laid so many human generations in the dust, and the associations which often connect them with important historical events, endear them to the student of antiquity. Their

fallen columns and broken arches, not only in paintings, but in the real landscape, are more beautiful than their first proportions could have been, or than far more perfect modern edifices appear. But so nice and delicate a sentiment is this taste for ruins, that we scorn any but the genuine ruins of long time. Taste has its statute of limitations like the law; it will have ruins whereof the memory of man runneth not to the contrary, or no prescription can exist for them. So too it chooses the effects of real barbarian violence. An ancient temple is the more venerable for what Goth and Vandal did; we take some interest in the work of Attila and Genseric, and are willing even to notice, in the brazen serpents of the Atmeidan, the wounds inflicted by the battle-axe of Mahomet II. But there is no romance in the ruins of lord Elgin, or the scars of Mr Belzoni's sledge-hammer. No one can behold with gratification the brick post erected by lord Elgin to support the corner of the temple of Erectheus at Athens, from which that nobleman *removed* (this is the term) one of the beautiful Caryatides; and we have strong doubts whether future travellers in Egypt will be particularly gratified with finding the roof of the temple of Denderah blown out by gunpowder and carved out with saws by M. Lelorrain, in manner and form as we shall presently state.

Nor is it merely that this merciless zeal often destroys the buildings on which it is exercised, and verifies by wholesale the pathetic allusion of Juvenal to the need in which the very monuments may stand of memorials. What is torn from a venerable ruin, the metope, the statue, the inscription, though it constituted, in its place, no inconsiderable beauty, may be nearly worthless in the museum to which it is removed. If men would tell the truth, ninety-nine out of a hundred would pronounce the headless trunks, noseless faces, and legless horses of the Elgin collection a sorry sight; and every one that has been dragged by an unrelenting cicerone through the entire suite of rooms of an Italian gallery, must feel that half their contents lost their value when taken from the places where they were found. Who can suppress his vexation, on visiting the spot where not fifty years ago the tomb of the Scipios was opened, at being told, that the true sarcophagus of old Scipio Barbatus has been removed to the Vatican, and that what he sees before him, within the walls of that primitive

republican sepulchre (which, being cut in the solid rock, has not been *removed*) is an excellent imitation of the old hero's coffin.

These remarks, for which there has unfortunately been too frequent occasion of late, to leave them the merit of novelty, are extorted from us by the pamphlet named at the head of this article. It is a memoir read by M. Saint-Martin to the Royal Academy of Inscriptions and Belles-Lettres, on the subject of the Zodiac of Denderah, a relic of antiquity, of which much has been said within a few years. We propose in the rest of this article to give our readers a short account of it.

The banks of the Nile are lined with ruins of great antiquity, from Cairo to the cataracts, and even far beyond, into those remoter regions which civilized travellers have hardly penetrated. The ruins of Denderah attract the notice of the traveller, as being the first after the pyramids themselves—which can hardly be called ruins—that meet him on his way up the Nile. It is partly owing, perhaps, to this circumstance, that these ruins are mentioned with so much enthusiasm by the travellers. Denon exclaims, 'I want words to express what I felt under the portico of Tentira. I felt myself, I really was, in the sanctuary of the arts and sciences. What epochs arose on my imagination, at the view of such a building! How many ages must it have required to bring a creative people to such results; to such perfection and sublimity in the arts! How many ages more to bring on an oblivion of such things, and reduce man, on the soil once fertile of such wonders, to the state of nature, in which we found him! Never was such a space crowded into such a point, and yet nowhere is the march of time so obvious and regular. What enduring power, what wealth, what abundance, yea, what superfluity of resource must not the government have possessed, which reared these structures, and which could command artists that could conceive, execute, and adorn them with every thing that speaks to the eye or the mind. Never had the works of man given me an image so distinct of his greatness and of his antiquity. Among the ruins of Tentira, the Egyptians seemed to me pygmies.'

The ruins at Denderah consist chiefly of the remains of a temple consecrated to Isis. The majestic portico of this edi-

fice is still entire, and presents a front length of one hundred and forty-five feet, a height of seventy, and a depth of seventy-two feet. The remains of a modern Egyptian *village* cover the top of this ancient building, if we may give the name of village to a collection of wretched hovels, constructed of sun-burned bricks by the peasantry who have fled to this elevated spot, either, as Dr Pococke intimates, to enjoy a freer air, or, as we may rather think, for protection from wandering barbarous hordes. Almost all the ancient Egyptian temples exhibit the same spectacle, and in nothing perhaps is the contrast between the ancient power and modern degeneracy of this people more glaring, than in the villages which one may find on the top of one temple, as at Denderah; and in the corner of another, as at Luxor.

It has generally been thought that this temple was dedicated to Isis, whose head constitutes the face of the capitals of the pillars, on each of the four sides of which they consist. But it has been also imagined that the edifice was connected with some astronomical institution, an inference which has been principally drawn from two Zodiacs, that have been discovered in different parts of the temple. The first is within the portico, at the two ends of the same, six signs being on the right hand and six on the left of the person who stands in the portico. The other Zodiac constituted a portion of the ceiling of an inner room of the temple, and was first noticed by Gen. Desaix, in the hasty visit which he made to this temple, while on the march by it. A drawing was made of it by Denon, and is found in his travels; and Messrs Jollois and Devilliers, two of the savans attached to the French army in Egypt, made a still more perfect one, which is contained in the atlas of the splendid work on Egypt commenced under the patronage of Napoleon, and continued under that of the present king of France.*

The intelligence of the discovery of these Zodiacs excited no little sensation among the learned, on the continent of Europe. As the sign of the lion stood at the head of one of the ranks of signs in the Zodiac of the portico; and also the same

* A copy of this work, than which perhaps none more splendid was ever published, was presented the last year by Mr W. H. Eliot to the library of Cambridge University. It is the only copy of it, of which we have heard, in this country.

sign was found at the head of the spiral line, formed by the twelve signs of the circular Zodiac, in the interior of the temple, it was thought that the Zodiac must have been constructed at a period, when the sun entered the sign of Leo at the solstice. By the law of the precession of the equinoxes, this would carry back the antiquity of the Zodiac, to a very remote period, and the disciples of Dupuis supposed that they found in it a historical monument to the truth of his enormous paraadoxes. They scrupled not to attribute to this Zodiac an age of thirteen thousand years, arguing that, whenever the temple of Denderah may have been built, (which was a point of no moment,) the Zodiacs upon its walls contained a disposition of the signs, which must have been contrived thirteen thousand years ago, at the period when the sun at the solstice entered the sign of Leo. It deserves to be added, to the credit of Dupuis himself, that he exhibited a moderation not always at his command, and (for reasons which M. Saint-Martin, though adopting nearly the same results, pronounces vague and inconclusive) reduced the antiquity of these Zodiacs to thirteen hundred years, instead of thirteen thousand.

While, however, the mass of the continental literati, from love of the marvellous or worse reasons, were urging the extreme antiquity of these Zodiacs, and carrying them back to an epoch anterior by far to the Mosaic chronology, there were not wanting those, who found powerful arguments for the opposite theory. The abbé Testa at Rome, and Visconti at Paris, maintained from internal evidence, that the Zodiacs could not be older than the christian era. Among the signs which they are found to contain, is that of Libra. Now Libra, or the Balance, was not introduced into the Zodiac till the time of Julius Cæsar. Before this period, the place of Libra was occupied by the projecting claws of the Scorpion. It was of course directly inferred that the Zodiac at Denderah containing this symbol, must be as recent as the age of Julius Cæsar. This argument, however, is of no great weight. M. de Humboldt thus expresses himself, in his magnificent work on the monuments of the native American nations. 'In the Arabian hemisphere, the belt of Orion is designated by the name of *the beam of the balance*, and it appears the more remarkable that one of the lunar stations of the Hindoos bears the same name, as, since the discovery of the Zodiac of Tentyra, doubts

have been started as to the antiquity of the Balance. It cannot be denied, that the figures of the Egyptian, Chaldæan, and Greek Zodiac were known in India from a period of unexplored antiquity, and it is probable that when Julius Cæsar added the Balance to the Roman Zodiac, he did it in pursuance of the suggestions of Sosigenes, who being a native Egyptian, could not be ignorant of the division of the ecliptic used in the east.'* This reasoning of Humboldt is silently adopted by Saint-Martin, and it follows of course, that no argument against the antiquity of the Zodiac of Denderah, can be drawn from the consideration, that the Roman Zodiac did not contain the Balance till the time of Julius Cæsar. M. Biot, however, started an objection to the extreme antiquity of this Zodiac (for the two may be spoken of as one) with which it is harder to deal. He suggested that in order to deduce from the Zodiac an inference as to the age in which it was constructed, it would be necessary to know in what degree and minute of the sign Leo, the sun arrived at the solstice, and it is plain that, for want of this knowledge, no interesting chronological use can be made of it.

M. Saint-Martin does not appear to have attached great weight to this consideration, but has turned his attention chiefly to another point, viz. that the planisphere in question is not constructed, as he thinks, in reference to astronomical phenomena, but simply in reference to the greatest event in the Egyptian economy, the rise of the Nile. This event always coincided with the hot season, and as this begins with the time of the heliacal rising of Leo, M. Saint-Martin thinks that Leo might stand at the head of the signs of the Zodiac, in a calendar constructed in reference to the inundation of the Nile and bearing no relation whatever to the solstice. In this way no inference as to the age of the Zodiac can be drawn from the fact, that the constellation of Leo stands first upon it.

From other reasons, however, depending on the probable explanation of the hieroglyphics found on the ceiling from which the Zodiac was removed, and from a fact, which M. Saint-Martin obscurely hints at, but does not state, reserving it to be proposed in a work entitled *the ancient history of Egypt* which he intends to publish, he fixes the age of this Zodiac at not more than nine hundred nor less than five hundred and sixty

* Monumens des Peuples Indigènes, p. 154.

years before our Saviour. Till M. Saint-Martin favors us with his farther discoveries, we can only say, that the limits within which he has fixed the age of this relic, appear to us highly probable, and we entertain as little doubt that it was placed by Visconti in an age too recent, as by the disciples of Dupuis, in an age too remote.

We proceed now to a short account of the removal of this work from the temple where it was found, and in doing this, we shall make use nearly of our author's words. The project of transporting the Zodiac to France was, conceived by M. Saulnier, a French merchant engaged in trade with Egypt. Unable to execute the design in person, he committed it to M. Lelorrain, to whose rare intelligence and prudence our author ascribes the successful accomplishment of it. M. Lelorrain started at the close of the summer of 1820, furnished with instruments of all kinds adapted to effect, in the manner the most expeditious and convenient, the removal of the planisphere. On his arrival at Cairo, he obtained the pacha's permission 'to dig' for antiquities, and nothing remained but to avail himself of it, 'which,' says our author, 'was precisely the difficult point.' Two persons have divided between them the exclusive right to discover antiquities in Egypt, and the river Nile forms the line of partition between them. M. Drovetti, the consul of France, like another Cambyses, vindicates to himself the right bank of that river, and Mr Salt, the English consul, like a second Pharaoh, rules over the mummy-pits and ruins of the left. Unfortunately for M. Lelorrain's enterprize, the temple of Denderah is in Mr Salt's dominions, and our author does not inform us by what casuistry he, as a subject of France, acquired the right of blowing up and sawing to pieces one of Mr Salt's ruins. The state of things obliged M. Lelorrain to proceed with great caution and secresy, and seizing on a favourable moment, when he was supposed to be on the banks of the Red Sea, he arrived at Denderah and began his operations.

The Zodiac to be removed, formed, as we observed, a part of the massy stone ceiling of an apartment in the temple, which ceiling was divided into two equal parts by a figure of Isis, traversing the whole length of the same. On the left of this figure is an astrological relief of uncertain signification, and on the right, the Zodiac. The Zodiac not being large enough

to cover the whole space on the right of the figure, the corners were filled up with hieroglyphical figures. It had been thought, as this ceiling formed the top of the temple, that on removing the rubbish, the ruins of the modern village, that obstructed the top, the stones which composed the cieling, could be lifted upwards from their places, and advantage be then taken of the accumulation of rubbish and soil by the side of the temple, which formed a declivity almost from its summit, to let down the massy Zodiac to the plain and to the Nile. It was thus, in general, that the business was effected, but with great difficulty, in consequence of the thickness of the stone. M. Saint-Martin has related, in the words of M. Lelorrain, the course pursued by this gentleman in accomplishing his arduous undertaking. The portion of the stone covered by the Zodiac and which was to be removed, was about eight feet square. 'I was at first,' says M. Lelorrain, 'much embarrassed to make a hole, whereby I could introduce the saw. The ceiling was three feet thick, and I was afraid of destroying the few chisels I had, and which would be more wanted in other parts of the process, should I make use of them for this purpose.' After one or two unsuccessful attempts with his saws, M. Lelorrain 'imagined an expedient which succeeded completely. I had brought some good gunpowder for presents. I began by blowing off the portions, about which I had sawed. I proceeded at first with caution, in order to ascertain the strength of my charges, and when I had settled this, I went on with confidence. I had the pleasure, after two days of the most fatiguing labor, to succeed in making a large hole, which I increased by the chisels, and into which I introduced the saw. Still I perceived that the saw advanced but one foot daily, and the three sides to be sawed amounted to twenty-four feet. This would have occupied much time, which was inconsistent with the requisite concealment of my operations. I accordingly made two other holes, so that I had three saws at work at once.

'Every thing went on well, my three saws were at work, I had excited my Arabs, and they worked with incredible zeal. I did not leave the superintendence of the work for a moment, when I fell sick, but in such a manner that it was impossible to move. Besides a horrible fever, all my nerves retired toward the joints. This frightful state lasted ten days,

during which, I was without a physician, till an Arab cured me with the juice of an herb with which I was unacquainted.'

M. Lelorrain had nearly been defrauded of the fruits of his labor in the moment of reaping them. While engaged with his three saws, a gentleman whom he calls 'M. Brodich, the American envoy,' and whom we presume to be our accomplished countryman, Mr Bradish, passed by Denderah and gave information to Mr Salt of what was going forward. Mr Salt is not of a temper patiently to acquiesce while unlicensed travellers thus 'molest his ancient, solitary reign,' and at his instance an order was soon expedited by the kiaya bey to the kachef of Keneh, forbidding M. Lelorrain to remove the planisphere. The remarks of our author on this subject are mischievously candid. 'As the ruins of Denderah are in the part of Egypt, of which Salt has reserved to himself the exclusive possession, it is not surprising that he wished to defeat M. Lelorrain's enterprize. The fact is the less remarkable, as Mr Salt contemplated himself the same undertaking, and the instruments destined to effect it arrived at Alexandria, while M. Lelorrain was on his way with his prize between Cairo and that city. The order of the kiaya bey arrived too late; the Zodiac was already upon the Nile. A movement was made to seize the boat in which it was placed, and M. Lelorrain, continues our author, was on the point of losing the fruit of his labors, and seeing it pass inevitably into the hands of the English.' At this trying moment, he luckily bethought himself of hoisting a white handkerchief upon a staff over the Zodiac, and thus putting it under the flag of France; the kachef of Keneh was afraid of the kerchief of M. Lelorrain, and the Zodiac proceeded safely down the Nile. On his arrival at Cairo, new difficulties arose, and the affair was submitted to the pacha himself, who decided in favour of M. Lelorrain. In July, 1821, this much contested monument was embarked in safety at Alexandria and arrived at Marseilles. Here it passed quarantine; the first time, we imagine, that the signs of the Zodiac were ever subjected to that judicious law; and it was in due season removed to Paris, where, we believe, it has been fixed in the ceiling of one of the apartments of the Louvre.

This interesting relic of antiquity is of sand-stone, about a foot thick, and eight feet square. It presents on its face a

circle inclosed in a square. Toward the middle of the circle, which is four feet in diameter, the twelve signs of the Zodiac are seen arranged upon a line, not exactly circular, but terminating spirally, the beginning being made by the Lion. Within these signs are the northern constellations, among which the Great Bear is particularly obvious, and placed precisely in the centre of the planisphere. It is the only one of the twenty constellations thus enclosed, which, in its figures, offers any analogy to the modern forms. Five asterisms stand on the same line as the zodiacal signs, and fifty one constellations of the lower hemisphere are without the Zodiac. The constellations are accompanied with hieroglyphics, which may be presumed to express their names. Should it appear, on examination, that this work is executed with scientific accuracy, and that the constellations of the Zodiac can be identified with those of our historical astronomy, these hieroglyphical characters may throw important light on the subject of decyphering, already carried so far by the late researches of M. Champollion.

Finally, this monument, after withstanding the assaults of saws, chisels, and gunpowder, of kachefs, kiayas, and consuls, and, more than all, of three thousand years, is in perfect preservation, and changed in nothing from its primitive state, but by the smoke of the torches with which it was surveyed by the numerous travellers in Egypt before its removal; which has rather improved its appearance, by a dark tint approaching that of bronze.

Art. XII.—*Report made to the General Assembly of the State of Louisiana, of the Plan of the Penal Code for the said State. By Edward Livingston, Member of the House of Representatives from the Parish of Plaquemines.* 8vo. New Orleans, 1822.

The preceding numbers of our journal have contained ample evidence, we trust, of our hearty cooperation in the furtherance of an object, which, while it is the cause of enlarged and enlightened humanity all over the civilized world, is emphatically so in this country, where every thing conducive to the improvement of man as a social being, is a kind of indi-

genous production of the soil. We allude to the generous endeavors of philanthropic individuals in the present age, to investigate, establish, and spread abroad a liberal and rational theory of penal jurisprudence, and to the zeal with which those endeavors have been seconded by the legislative bodies of America at least, if not of Europe. In examining the work now before us, and transferring to our pages such extracts from it as may suffice to exhibit a specimen of its character and execution, of the high-minded views of public policy, the strain of manly and animated eloquence, the powerful reasoning, the comprehensiveness and accuracy in details, by which it is every where pervaded and marked, we shall only be continuing our humble exertions to contribute to the diffusion of genuine principles of benevolence and justice.

Mr Livingston's Report was made in consequence of an act of the General Assembly of Louisiana relative to the criminal laws of that state, passed in February, 1820, which, after adverting in the preamble to the primary importance of judicious criminal laws to every well regulated state, and the defectiveness of those already existing there, proceeds to declare that a person should be chosen by the legislature to prepare and present to them the *projet* of a suitable penal code for Louisiana. This honorable task was accordingly assigned to Mr Livingston, whom, with a confidence equally flattering to him and creditable to the state, the legislature appointed to carry their designs into execution; and to these proceedings we are indebted for the Report. As this is the first instance, we believe, in our country, in which a radical reform of the criminal laws of a state has been systematically and deliberately undertaken, we rejoice that the attempt was commenced under such favorable auspices. We congratulate the state of Louisiana that so many propitious circumstances have conspired, in the present experiment, to give it a chance of fair and unembarrassed trial, so far as the intrinsic perfection of the code can minister to its successful operation in practice. And we consider it as not the least propitious of these circumstances that a jurist was selected to prepare the plan, whose personal qualities are an adequate pledge and guarantee of the excellence of whatever comes from beneath his hand, and whose public standing is such that he must move in a sphere far above the influence of any inducements, but

an ambition to promote the best good of his country and his species. It was an advantage, also, of no inconsiderable weight, that only a single person was charged with this noble trust,—that Mr Livingston was not encumbered and shackled in the prosecution of his enquiries by a subjection to the opinions of associates in his important functions, but was wisely left to the guidance of his own individual intellect. Had the task of compiling a criminal code been committed to several persons instead of one alone, we believe the symmetry and excellence of the work would have been essentially impaired. If we reflect on the history of legislation, we shall find that seldom has an extensive and radical improvement been effected in the laws of a country, except where that country was subject to the despotic sway of a single ruler, who, like Justinian, Frederic, or Napoleon, could sweep away the ancient system, and substitute a new one in its stead, by the irresistible arm of power,—or where the will of a free people spontaneously deferred a temporary authority for that purpose to a Moses, a Charondas, a Lycurgus, or a Solon. And for the same reason we applaud the wisdom displayed by Louisiana in determining to have an entire new criminal code, which was peculiarly demanded by a state, over which three distinct nations have successively ruled;—Spain and France, as their dominion passed away, each leaving behind her imperishable traces of her national peculiarities impressed on the laws of the people, and the adoption of that people into the great American family, having now superadded many features of the English jurisprudence to those already stamped upon the institutions of Louisiana by the French and Spaniards. In these circumstances it would have been idle to think for a moment of reforming the criminal law without beginning at the very root, and renovating the whole parent trunk, as well as the remoter branches. Even we, in the Atlantic states, where our laws, flowing from a single uniform source, can more easily be amended by means of partial changes, have seen enough of the effects of fastening the *purpureus pannus* over the blemishes in our laws,—enough of the evils of such imperfect legislation,—to be satisfied of the necessity of something different, in order to reform laws so multifarious in respect to their origin, as those of Louisiana.

Such are the favorable circumstances under which the duty

of reforming the criminal code of Louisiana has been entered upon by Mr Livingston, who lays before his constituents, in the Report under consideration, a general account of his plan, with an exposition of the most important among the changes proposed by him, and some detached parts of the projected code, as specimens of the execution of the work. The code is divided into six books. The first is composed of definitions of technical words, and directions with regard to the promulgation of the code; the second contains a preamble, and certain dispositions of a general and introductory nature; the third defines offences and designates their punishment; the fourth establishes a system of criminal procedure; the fifth contains rules of evidence applicable to trials for the several offences made punishable by the code; and the last relates to the establishment and government of a penitentiary. The preamble of the second book comprises an outline, sketched with a bold and masterly hand, of the whole science of penal law,—the great fundamental truths, which it is the purpose of the code to embody forth and put in practice; and an extract from this preliminary chapter, will fully unfold the objects, nature, and extent of the improvements projected by Mr Livingston.

'The General Assembly of the state of Louisiana declare that their objects in establishing the following code are:—

'To remove doubts relative to the authority of any parts of the penal law of the different nations by which this state, before its independence, was governed.

'To embody into one law, and to arrange into system, such of the various prohibitions enacted by different statutes as are proper to be retained in the penal code.

'To include in the class of offences acts injurious to the state and its inhabitants, which are not now forbidden by law.

'To abrogate the reference, which now exists, to a foreign law for the definition of offences and the mode of prosecuting them.

'To organize a connected system for the prevention, as well as for the prosecution and punishment of offences.

'To collect into one code, and to express in plain language, all the rules which it may be necessary to establish, for the protection of person, property, condition, reputation, and government; the penalties and punishments attached to a breach of those rules; the legal means of preventing offences, and the

forms of prosecuting them when committed; the rules of evidence, by which the truth of accusations are [is] to be *tested;* and the duties of executive and judicial officers, jurors, and individuals, in preventing, prosecuting, and punishing offences: to the end that no one need be ignorant of any branch of criminal jurisprudence which it concerns all to know.

'And to change the present penal laws, in all those points in which they contravene the following principles, which the General Assembly consider as fundamental truths, and which they have made the basis of their legislation on this subject, to wit:—

'Vengeance is unknown to the law. The only object of punishment is to prevent the commission of offences. It should be calculated to operate,

'First, on the delinquent, so as by seclusion to deprive him of the present means, and, by habits of industry and temperance, of any future desire to repeat the offence.

'Secondly, on the rest of the community, so as to deter them by the example, from a like contravention of the laws. No punishments greater than are necessary to effect these ends ought to be inflicted.

'No acts or omissions should be declared to be offences, but such as are injurious to the state, to societies permitted by the laws, or to individuals.

'But penal laws should not be multiplied without evident necessity; therefore, acts, though injurious to individuals or societies, should not be made liable to public prosecution, where they may be sufficiently repressed by private suit.

'From the imperfection of all human institutions, and the inevitable errors of those who manage them, it sometimes happens that the innocent are condemned to suffer the punishment of the guilty. Punishments should, therefore, be of such a nature that they may be remitted, and as far as possible, compensated, in cases where the injustice of the sentence becomes apparent.

'Where guilt is ascertained, the punishment should be speedily inflicted.

'Penal laws should be written in plain language, clearly and unequivocally expressed, that they may neither be misunderstood nor perverted; they should be so concise, as to be remembered with ease; and all technical phrases or words they contain, should be clearly defined. They should be promulgated in such a manner, as to force a knowledge of their provisions upon the people; and to this end, they should not only be published, but taught in the schools, and publicly read on stated occasions.

'The law should never command more than it can enforce. Therefore, whenever, from public opinion or any other cause,

a penal law cannot be carried into execution, it should be repealed.

'The accused, in all cases, should be entitled to a public trial, conducted by known rules, before impartial judges, and an unbiassed jury; to a copy of the act of accusation against him; to the delay necessary to prepare for his trial; to process to enforce the attendance of his own witnesses, and to an opportunity of seeing, hearing, and examining those who are produced against him; to the assistance of counsel for his defence; to free communication with such counsel, if in confinement; and to be bailed in all cases, except those particularly specified by law.

'No presumption of guilt, however violent, can justify the infliction of any punishment before conviction, or of any bodily restraint greater than is necessary to prevent escape; and the nature and extent of the restraint shall be determined by law.

'Perfect liberty should be secured of hearing and publishing the proceedings of criminal courts; and no restraint whatsoever should be imposed on the free discussion of the official conduct of the judges, and other ministers of justice, in this branch of government.

'Such a system of procedure in criminal cases should be established, as to be understood without long study; it should neither suffer the guilty to escape by formal objections, nor involve the innocent in difficulties by errors in pleading. For this purpose amendments should be permitted in all cases where neither the accused nor the public prosecutor can be surprised.

'Those penal laws counteract their own effect, which through mistaken lenity, give greater comfort to a convict than those which he would probably have enjoyed while at liberty.

'The power of pardoning should be exercised only in cases of innocence discovered, or of certain and unequivocal reformation.

'Provisions should be made for preventing the execution of intended offences whenever the design to commit them is sufficiently apparent.

'The remote means of preventing offences do not form the subject of penal laws. The General Assembly will provide them in their proper place. They are the diffusion of knowledge by the means of public education, and the promotion of industry, and consequently of ease and happiness among the people.

'Religion is a source of happiness here, and the foundation of our hopes of it hereafter; but its observance can never, without the worst of oppression, form the subject of a penal code. All modes of belief and all forms of worship are equal in the eye of the law; when they interfere with no private or public rights, all are entitled to equal protection in their exercise.

* * *

'The innocent should never be made to participate in the punishment inflicted on the guilty; therefore no such effects should follow conviction as to prevent the heir from claiming an inheritance through or from the person convicted. Still less should the feelings of nature be converted into instruments of torture by denouncing punishment against the children to secure the good conduct of the parent.

'Laws intended to suppress a temporary evil should be limited to the probable time of its duration, or carefully repealed after the reason for enacting them has ceased.' pp. 111—116.

These general maxims, all of indisputable truth, being laid down in the outset, serve as a clue to guide the legislator through the multiplicity of particular provisions, which compose the body of the code. But it is easier to arrive at general conclusions in political philosophy, than it is to determine the application of those conclusions to specified cases, or to reduce them to a practical form. What use Mr Livingston has made of them will appear from adverting to some of the changes proposed and defended by him in the Report:—changes, which, whether they are improvements, or innovations merely, are of sufficient importance to be entitled to attentive consideration.

We would not be of the number of those rash and intemperate innovators upon the established order of things, who mistake novelty for excellence, who deem an institution antiquated because it is old, and who would rush on precipitately in a career of bold and sweeping legislation, without duly weighing the dangerous consequences of their headlong course. Laws are so closely complicated and bound together by an infinite variety of delicate relations, and so powerful is the reciprocal action upon each other of laws and of public sentiment, that he must be endowed with more than human sagacity, who can look into future ages, and trace out the long chain of consequences, which may follow the introduction of a solitary change in existing institutions. It is not only the passing generations of men, whose interests are to be regarded, but those also which have not yet arisen to play their part on the stage of life, are deeply concerned in the question. But, on the other hand, while institutions, which have gained strength from being long associated with our prepossessions and habits, should never be discarded without the most powerful inducements,—still they, who have the control

and guidance of public sentiment, should take heed how they cling to ancient abuses for no other reason but that they are ancient. It is no proof of respect for the past to follow it blindly and implicitly; because it is only what all time has sanctioned, not what has subsisted during all time, which is entitled to our veneration. Nay, if we listen as we ought to the voice of experience, she will tell us that time is the greatest of all innovators. Every thing admirable in the science or the arts of the present age is a new argument to show how incessantly time is innovating upon the institutions, usages, opinions, and principles of our forefathers. In truth, today is older than yesterday, and therefore, were the mere age of a doctrine to be regarded, the tenets of the present would have a stronger claim to be invested with the *prestige* of antiquity than those of the past. We should consider that, if they who went before us were giants and we are but pygmies, yet, as Fontenelle ingeniously observed, we stand upon their shoulders, and can therefore extend our view to comprehend a wider expanse of the intellectual horizon than their vision embraced. We possess not only the wisdom of the ancients, but the wisdom of the moderns also, by which to correct the errors and supply the deficiencies in the knowledge handed down to us from the sages of preceding times. And whatever attachment we may feel for institutions which our fathers established, which we were born under and bred to revere, and with which all the fondest recollections of our early years are associated,—as earnest inquirers after truth, we should fail in our duty to ourselves and posterity, if we did not come to the question of the expediency of such institutions wholly divested of any prepossessions, apart from our judgment of their intrinsic excellence.

It is the more necessary to entertain this feeling in connexion with our criminal laws, inasmuch as their substance, their system, their technical language, and their genuine spirit belong to a rude and uncivilized period in man's history. The peculiar provisions of the common law, whether of Saxon or Norman parentage, were devised amid the civil broils and the universal ignorance of the middle ages; and gloriously distinguished, as this system was, among all those which arose at the same period, by the rare infliction of torture and by the prevalence of a public trial by a jury of peers, it

bore, nevertheless, too evident traces of the barbarian genius which presided over its construction. These considerations ought to be carried along with us in examining Mr Livingston's Report, because it recommends some departures from the generally received principles of criminal law, which are bold innovations even in this country, where, as he himself observes, 'there is no antiquity to create a false veneration for abuses.'

Mr Livingston proposes, among other smaller changes, four principal deviations from the crimes designated by the common law, all which deviations are defended with great eloquence, and with a cogency of reasoning which it is certainly difficult to withstand. The first of them is a modification of the law respecting complicity. Our juridical readers will recollect that, by the common law, any 'person, who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon,' is styled an accessory after the fact, and in most cases subjected to the same punishment as the principal offender.* By the provisions of the new code of Louisiana, such an act is to cease to be criminal in relations of the principal in the ascending or descending line, or in the collateral, as far as the first degree, or in persons united to him by marriage, or owing him obedience as a servant.

'Our law now calls for the punishment of acts, which, if not strictly virtues, are certainly too nearly allied to them to be designated as crimes. The ferocious legislation, which first enacted this law, demands, and sometimes under the penalty of the most cruel death, the sacrifice of all the feelings of nature, of all the sentiments of humanity; breaks the ties of gratitude and honor; makes obedience to the law to consist in a dereliction of every principle that gives dignity to man; and leaves the unfortunate wretch, who has himself been guilty of no offence, to decide between a life of infamy and self-reproach, or a death of dishonor. Dreadful as this picture is, the original is found in the law of accessories after the fact. If the father commit treason, the son must abandon or deliver him up to the executioner. If the son be guilty of a crime, the stern dictates of our law require that his parent, that the very mother who bore him, that his sisters and brothers, the companions of his infancy,—should expel nature from their hearts and humanity from their feelings; that they should barbarously discover his retreat; or with in-

* Blackstone's Com. iv. 37.

human apathy abandon him to his fate. The husband is even required to betray his wife, the mother of his children; every tie of nature or affection is to be broken, and men are required to be faithless, treacherous, unnatural, and cruel, in order to prove that they are good citizens and worthy members of society.' *Report*, pp. 30, 31.

Perhaps the common law goes too far in making it criminal to afford the least aid or shelter to a felon, although it would evidently be difficult to draw the line between those acts which tend, in a greater or less degree, to obstruct the course of justice; but we doubt whether Mr Livingston's amendment would be found safe in operation. If the persons particularized in the code have a right to exercise all their ingenuity, nay, to have recourse to violence itself, to enable their kinsman to elude the pursuit of justice, felons might easily set the laws at defiance. We do not say that the laws ought to go the length of asking a parent to abandon his child, or a husband his wife, much less to assist in their apprehension; it may be wrong to look, in every father, for the stern justice of a Junius Brutus. But we should hesitate in granting men protection and indemnity, while they were rescuing the guilty from that punishment, which the good of society required they should suffer. Besides, Mr Livingston confines the privilege to certain specified relations, leaving cases of other 'ties of gratitude or friendship,' to 'the consideration of the pardoning power.' Now it is clear that the principle, on which Mr Livingston would excuse persons in the cases referred to,—that it is unjust to demand of men to do what is incompatible with the natural feelings of humanity,—applies with equal force to many relations, for which he does not and cannot provide. How often are 'the ties of gratitude or friendship' stronger than those of birth;—and yet he, who should yield to the dictates of nature for the protection of his friend or benefactor, must still be subjected to suffer as an accessory.

Whatever doubt there may be, however, with respect to the expediency of this change, there can be none as to the two next proposed by Mr Livingston. The reasons, which induced him to expunge from his code the act of suicide, and another, whose name ought never to pollute the laws of a civilized people, we think are unanswerable. For his remarks on the latter, we refer to the Report itself; on the former, he observes:

'Melancholy, misfortune, and despair sometimes urge the unhappy to an act, which, by most criminal codes, is considered as an offence of the deepest die; and which, being directed principally against the offender himself, would have required a separate division, if it had been admitted in this code. It has not; because its insertion would be contrary to some of the fundamental principles, which have been laid down for framing it.

'Suicide can never be punished but by making the penalty, whether it be forfeiture or disgrace, fall exclusively upon the innocent. The English mangle the remains of the dead. The inanimate body feels neither the ignominy nor pain. The mind of the innocent survivor alone is lacerated by this useless and savage butchery, and the disgrace of the execution is felt exclusively by him, although it ought to fall on the laws which inflict it. The father, by a rash act of self-destruction, deprives his family of the support he ought to afford them; and the law completes the work of ruin, by harrowing up their feelings, covering them with disgrace, and depriving them, by forfeiture, of their means of subsistence.

'Vengeance, we have said, is unknown to our law; it cannot, therefore, pursue the living offender, much less, with impotent rage, should it pounce like a vulture on the body of the dead, to avenge a crime which the offender can never repeat, and which certainly holds out no lure for imitation. The innocent, we have assumed, should never be involved in the punishment inflicted on the guilty; but here not only the innocent, but those most injured by the crime, are exclusively the sufferers by the punishment. We have established, as a maxim, that the sole end of punishment is to prevent the commission of crime; the only means of effecting this, in the present case, must be by the force of example. But what punishment can be devised to deter him, whose very crime consists in the infliction upon himself of the greatest penalty your law can denounce? Unless, therefore, you use the hold which natural affection gives you on his feelings, and restrain him by the fear of the disgrace and ruin with which you threaten his family, your law has no effective sanction. But humanity forbids this; the legislator that threatens it, is guilty of the most refined tyranny; if he carries it into execution, he is a savage. It is either a vain threat, and therefore cannot operate; or if executed, with an ill-directed rage, strikes the innocent because the guilty is beyond its reach.' pp. 35, 36.

The three changes on which we have commented, are omissions of crimes recognized by the common law, as it exists in England and is adopted in most of the United States. The last change in the enumeration of public offences recommend-

ed by Mr Livingston, is the creation of a new class, against the freedom of the press. He remarks:

'It has generally been thought a sufficient protection [of the liberty of the press] to declare that no punishment should be inflicted on those who legally exercise the right of publishing; but hitherto no penalties have been denounced against those who illegally abridge this liberty. Constitutional provisions are, in our republics, universally introduced to assert the right, but no sanction is given to the law. Yet do not the soundest principles require it? If the liberty of publishing be a right, is it sufficient to say that no one shall be punished for exercising it? I have a right to possess my property, yet the law does not confine itself to a declaration that I shall not be punished for using it; something more is done; and it is fenced round with penalties, imposed on those who deprive me of its enjoyment.

* * *

'All violence, or menace of violence, or any other of the means which are enumerated in the code; all exercise of official influence or authority, which may abridge this valuable privilege is declared to be an offence. Nay, the project which will be presented to you, goes further, and considering the constitutional provision as paramount to any act of ordinary legislation, and consequently that all laws in derogation of it are void;—it declares all those guilty of an offence, who shall execute any law abridging or restraining the liberty of the press, contrary to the privilege secured by the constitution.' pp. 39—41.

We confess that this improvement strikes us as being rather fanciful, and, what is worse, as unnecessary and incapable of answering any useful purpose. Mr Livingston cannot be more ardently attached to a free press than ourselves, nor more resolute to maintain it to the best of our ability, in its full integrity, at every hazard. Most fervently do we respond to the declaration of our own constitution, that 'the Liberty of the Press is essential to the security of freedom in a state.' But we think this liberty is sufficiently guarded by the removal of all restrictions on its legitimate use. From whom are we to apprehend any infringement of it, which a penal sanction in the laws could prevent? Not surely from persons in their private, individual capacity; because the liberty is of such a nature, that no direct invasion of it can be made by private persons. It is not in the power of man to impede us in the mere publication of our sentiments, by any immediate act, for which the laws do not sufficiently provide. In revenge

of what we have published, or in anticipation of what we intend to publish, he may attack, seize, imprison our persons; he may denounce our principles and defame our characters; he may deface or destroy our manuscripts, or sheets, or scatter their fragments abroad to the winds of heaven; he may break up our apparatus for printing, and disperse our types or shake them together into inextricable confusion: but who would pretend that either of these acts was, properly speaking, an invasion of the freedom of the press? They are all infringements of the rights of personal security, liberty, or property, for which the comprehensive remedies of the common law already afford adequate redress. No direct attack can be made on the freedom of the press *as such*, but by some branch of the government. Now if the executive or judicial authorities attempt to debar a citizen from the free use of a privilege accorded him by the laws, the injured party may proceed against the wrong-doer as a private individual, amenable, like other individuals, to the municipal laws of his country; or he may pursue the constitutional remedy of an impeachment of such wrong-doer for the illegal act as perpetrated in his official capacity; or he may do both; and in this alternative, he certainly has most ample opportunity to obtain legal indemnification for his injury. In short, there is but one source in our republics, from which any serious attack on the liberty of the press can be rationally apprehended, and that is the legislature. Should our legislative halls ever become a field for the ambitious efforts of unprincipled men, it would evidently be for their interest, and would probably be their endeavor, to abridge and circumscribe the operations of the press, which, if free, could not fail to oppose the most formidable resistance to the execution of any project for subverting the constitution. Now if such a crisis in the affairs of Louisiana should hereafter occur, how is it that the penal denunciations in the new code can chain the hands of the General Assembly? They do not become incorporated in the constitution. The same power which enacts the code, may repeal it. Nor do we think it sufficient to reply to this objection, as Mr Livingston does, that 'the repeal of this part of the code would be an acknowledgment, on the part of those who procured it, that they were hostile to the right secured by the constitution;' and that this no representative would dare to avow. If it were reasonable

to suppose this would prevent the repeal of the provisions in question, still it could not prevent the execution of those insidious practices against the freedom of the press, which, our author very justly intimates, are much more to be dreaded than direct and open attacks. Suppose some future legislalature should endeavor to abridge and circumscribe the liberty of the press by passing a law to declare certain descriptions of writing libellous. If the law was incompatible with the constitution, it would be merely void, and so could do no harm. If it was constitutional,—if it was a law which it was fully within the authority of the legislature to enact,—we see no way by which Mr Livingston's plan could prevent its being executed; because the courts cannot have a right to animadvert on the legislature for the exercise of a strictly constitutional power. Furthermore, we do not conceive it to be necessary to protect the liberty of the press by penal laws against its infringement. It is no more requisite in this case than it is in order to protect the liberty of conscience—a liberty as dear, unquestionably, to freemen and to Americans, as that of the press. If the laws grant every man the right of enjoying perfect freedom in respect to his religious sentiments so long as the public safety or the corresponding right of his fellow-citizens is not compromitted,—his freedom is secure, and he ought to ask for nothing more from the state. So it is, in our opinion, with regard to the liberty of the press. We do not deny that there are many very serious defects in the present law of libel; and we should rejoice to see the leading provisions in Mr Brougham's famous bill for securing the liberty of the press, and preventing its abuses,* adopted on this side the Atlantic; but we feel satisfied that our present system of laws, when so amended, would abundantly suffice to protect the exercise of this invaluable privilege in its full extent.

We have enlarged on this topic considerably, both because of its importance in itself, and because we entertain such high respect for the judgment and opinions of Mr Livingston, that we were unwilling to differ from him materially without assigning our reasons at some length. Mr Livingston next proceeds to consider a portion of criminal law, which is undoubtedly the most important, namely, the means of securing obedience to its prohibitory and mandatory provisions, or the

*Edinburgh Review, No. 53.

punishment of crimes. In this branch of his duty, he investigates his principles with great care and faithfulness, and then fearlessly follows them out through all their consequences.

'It would be disgusting and unnecessary to pass in review all the modes of punishment, which have, even in modern times, been used, rather it would seem to gratify vengeance, than to lessen the number of offences. A spirit of enlightened legislation, taught by Montesquieu, Beccaria, Eden, and others,—names dear to humanity,—has banished some of the most atrocious from the codes of Europe. But it has happened in this branch of jurisprudence, as it has in most other departments of science, that long after the great principles are generally acknowledged, a diversity of opinion exists on their application to particular subjects. Thus, although the dislocation of the joints is no longer considered as the best mode of ascertaining innocence or discovering guilt; although offences against the Deity are no longer expiated by the burning faggot; or those against the majesty of kings avenged by the hot pincers, and the rack, and the wheel; still many other modes of punishment have their advocates, which, if not equally cruel, are quite as inconsistent with the true maxims of penal law. It may, therefore, be proper to pass some of them in review.' pp. 43, 44.

We need not follow our author through his exposition of the defects of the ordinary modes of punishment, which the example of Europe has sanctioned too long, but which now meet with few advocates in America. Banishment, deportation, simple imprisonment or imprisonment in chains, confiscation of property, exposure to public derision, labor on public works, mutilation or other indelible marks of disgrace, stripes or the infliction of other bodily pain,—are all of them punishments, which the good sense of the people of our country in general, no less than the sober conviction of men who make this a subject of philosophical inquiry, has almost universally condemned, as alike inconsistent with the principles of justice and humanity, unsuited to the temper of the times, and hostile to the liberal spirit of all our laws, customs, habits, and institutions. Mr Livingston has done, we apprehend, what the great mass of his countrymen will cordially approve, in throwing these altogether out of the question in the compilation of his code; and in abolishing, at the same time, the punishment of death, he has ventured upon the trial of a system, whose efficacy all humane men will rejoice to see thoroughly

tried, whatever doubt may exist with regard to the issue. For the reason just mentioned, as also that we have heretofore expressed our opinion very fully, in the places referred to at the beginning of this article, on the subject of all the descriptions of punishment discarded by Mr Livingston, but death, we may pass over them here; but we crave the attention of our readers while we enter briefly into the examination of his remarks on this last head. While so many wise and excellent persons continue to think the exigencies of social order require us to stop, in the career of penal reform, at the point beyond which Mr Livingston has dared to go,—we do not feel prepared to urge unreservedly the expediency of abandoning capital punishments; but we desire to state why we rejoice, as we said, that the experiment is about to be tried in Louisiana, and why we wish it might be tried in her sister states.

It is a mistaken but popular notion, arising doubtless from the cruel and sanguinary nature of the punishments which have prevailed in the governments established on the ruins of the Roman empire, that penal denunciations are the principal sanction of the laws, and the great moral machinery for the preservation of the rights of individuals and of the public, in political communities. This degrading view of the purposes of human action is, thank heaven, as false in theory as it is pernicious in effect. The very fact, indeed, that crimes are punished at all affords an unanswerable proof of our position; for if, amid all the bad passions of social man, a redeeming spirit were not abroad in society,—if the principle of virtue in mankind did not overmaster the principle of vice,—if the fear of punishment were the sole or main motive which deterred them from the commission of crime,—it is most clear that penal laws would never be made or executed, because the necessary physical power would be wanting to accomplish that purpose. But the number of men in a community is small, and the situations in almost every man's life are few, where it is only the apprehension of the laws, which deters from the perpetration of crime. No, the great body of the community do not abstain from murder, rapine, and other high-handed offences, because they have the terror of an indictment before their eyes. Men must already be far gone in guilt before they can be fit subjects for the operation of such influences. Their natural abhorrence of crime generally preserves them

from its contamination. And the inference deduced from this fact is confirmed by the circumstance that the hope of reward is the most active stimulant that ever animates the human breast. Justly may we say, *benevolentiæ vim esse magnam, metus imbecillam*, as Cicero did, in his Offices, when contrasting the different principles of government pursued in early and later times by the Romans. For if hope be not stronger to impel than fear to deter, what is it that ever prompts men to the commission of crime? Surely they do not violate the sanctity of private property *de pure perte*, and without the expectation of some benefit to be attained; nor do they imbrue their hands in a brother's blood, under the influence of a mere spirit of mischief, or of any inexplicable and mysterious fatality overruling their destiny. Men act from more simple motives. They perpetrate crimes on precisely the same principle of conduct for which we contend as the strongest, and of which many legislators make so little account,—the preponderance of the hope of some good to be gained by the deed, over the fear of the evils which may pursue the doer of it. So true it is that this very fear of punishment, which some would have to be the grand moral arcanum for purifying society of all its noxious propensities, yields, in every case where we can discern the working of these propensities, to the more potent counteracting influence of the hope of reward. In innumerable cases that could be imagined, where the respective influences of the hope of good and fear of evil are placed in conflict, the whole history of human life and conduct evinces, that the stimulating and honorable principle of the hope of reward is far more powerful, than the depressing and ignoble principle of the apprehension of punishment. All our springs of enterprise are set in action by hope; and as it is certain that the race of man goes on constantly improving,—that his soul has that in it which enables it to rise superior to the afflictions and vexations, which ally us to earth,—that under the inspiring auspices of hope, he nerves himself to manly achievement,—in the same degree is it certain that fear is less powerful than hope. If our laws had no better sanction than the punishments detailed in the statutes, the poor expedients of the scaffold or the prison-house, slippery indeed would be the foundation, and frail the fabric of civil order. Fortunately it rests on a firmer basis. The rock of ages, on which it is indestructibly established, is the

integrity and sanctity of public sentiment, the dignity of our nature, the innate and inextinguishable love of excellence of which man's breast is the sanctuary, the desire of deserving and acquiring the love and esteem of our fellows, and, above all, the certainty that virtue is its own reward in this life and the pledge of eternal happiness when we shall have

'shuffled off this mortal coil;'

these are the sources from which our laws derive their surest and strongest sanction.

The false notions which we have endeavored to expose, were, as we said, partly the offspring of that cruel system of penal law, which grew up in a barbarous age, and still endures in too many countries, a monument alike of the ignorance of the fathers and the prejudice of the sons. But there has been a reaction also, and if these laws were originally the rude invention of a ruder people, they have since been perpetuated by the very misconceptions to which they gave rise. For those misconceptions have induced legislators to repose undue reliance upon a mode of internal administration, consisting only of the summary process of severe penal denunciations. Such a theory is radically inconsistent with all sound principles of government; because it evidently tends to debase the moral sentiment of the people,—to substitute in their minds a set of degrading motives in the place of more worthy ones,—to counteract its own operation by leading to executions so numerous as to engender a savage and hardened national character, or so rare as to reduce the chances of punishment, and thus occasion the laws to be defied with impunity. More than all, and in one word, the theory is pernicious because it produces a waste of power. We hold it to be a fundamental axiom in political science, that no more power is to be applied to any object than is necessary to effect the desired end. Now those laws which proceed upon the hypothesis, that holding up the fear of punishment is the great secret of governing men,—those laws which are lavish in the number or excessive in the degree of the penal inflictions denounced by them against crimes,—those laws which pronounce the punishment of death in any case,—do, as we contend, lie open to this unanswerable objection of a prodigal expenditure of power. We charge all governments, which enact such laws, with violating a maxim as true in politics as in poetry:

Nec Deus intersit, nisi dignus vindice nodus.

We say to them: You are false to your duty as lawgivers bound to consult the best interests of your constituents, since, regardless of the value of life, you are culpably lavish of it where its destruction is not needed. You are wasting the means of government, which social union imparts to you to be husbanded with care and cautiously applied. You descend to the *ultima ratio*,—the last desperate remedy of the laws,—the final and fatal exercise of the highest act of human authority,—and you do it when you ought to be exerting the skill of a refined and lettered christian in preventing the crime, instead of wreaking upon the culprit the mere brute force of an uncivilized savage. You have declared, in the words of Beccaria, *una guerra della nazione con un cittadino;* you, wielding all the power of a mighty people, have levelled it against the devoted head of a solitary citizen, as if there were no means within your reach to secure the nation against the aggressions of individuals but by urging upon them singly a war of extermination.

Our readers will now perceive on what ground we are content to rest the whole dispute; setting aside for the present all other considerations, we willingly restrict the enquiry to this simple position: The ends of government can be answered by milder punishment than that of death, and therefore it is inexpedient, as an abstract principle of public policy, to inflict the punishment of death. We speak now of the ordinary cases of government; of course, we do not mean to include in them such extraordinary cases as popular tumults and seditions, in times of general anarchy, when a body of the people have taken up arms against the laws, and can be quelled only by the same means, which would be necessary to repel a foreign national enemy. But we maintain that, in all cases of proper private crime, the infliction of death in sanction of the laws is a waste of power. Those who hold an opposite opinion cannot complain of this view of the subject; it is conclusive, if true; and if fallacious, the fallacy must be easy of detection and exposure. Let us examine the doctrine a little more closely, and see whether the inference, which we wish to draw, do not follow inevitably from the premises.

The advocates of the punishment of death in this country are not desirous, we believe, to extend it to more than five or six of the most flagitious crimes, such as treason, murder,

robbery, arson of a dwellinghouse, and a few others of a like dangerous stamp, which, as they contend, the security of society demands should be thus rigorously punished. Now let us suppose that a misguided man, infatuated by the temporary madness of revengeful passions, raises his hand against the life of another; or urged and goaded on by the stimulus of imperious want, seizes, with licentious rapacity, the gold which fortune has bestowed upon his more prosperous fellow. When the strong arm of the law has arrested the unhappy offender, who, if he deserves to be condemned for his guilt, deserves also to be pitied for his weakness, in what manner shall violated justice visit his crime? Shall she array herself in wrath, and pursue him with the sternness of private vengeance? No:—she personates the majesty and integrity of the laws; it is not for her to indulge in those very passions, which have troubled the world's peace. Shall she presume to scrutinize his heart, and then hurl down her indignation upon the criminality, which she imagines she can discover there? O no:—she herself does but speak the voice of poor fallible man; it is not for human justice to assume the attributes or arrogate the prerogatives of heaven. She has detected a member of the community in a daring attack upon its vital interests,—she has apprehended him in arms against the public tranquillity,—she has found him, if you please, throwing off the protection of the laws and overleaping the pale of the social compact. What then? Shall she serve him as was practised of old in England with outlawed felons, who, having renounced all law, were said to have *caput lupinum;* shall she declare that he may be hunted down and slain, wheresoever he can be caught, as a beast of prey? This is what the advocates of capital punishment would have her do; but surely the national power is most unworthily used, if it be wreaked thus terribly upon the wretch, whom it ought in the beginning to have withheld from committing crime, and whom, now that it is too late to prevent his guilt, it should endeavor to reclaim to society, and enable to atone for his sin by passing the residue of his days in penitence and usefulness.

But we shall be told it is not enough to dispose of this single individual. The good of society requires, when the laws have been violated, that the offender should be so dealt with, as by the salutary influence of his example to deter others

from a repetition of his offence. Although as respects this individual himself, if he stood alone, it would be the right of the government to take measures only to secure his future obedience, yet, as some method must be devised to sanction the laws, the government has a further right to sacrifice him at the shrine of public justice, for the benefit of the community, whose protection he has forfeited. It is at this point,—the comparative force of death as an example,—that our author takes up the argument, which he chiefly confines to this consideration. He contends that the fear of the privation of life does not exert so powerful an influence on the mind as many other motives, which are within the control of a legislator; and that, if you make the spectacle of the infliction of death common, it debases and brutalizes the public sentiment,—if you make it rare, it converts the criminal into a martyr,—and in either alternative does more evil than good. A few extracts will fully explain his ideas on the subject.

'Let us have constantly before us, when we reason on this subject, the great principle, that the end of punishment is the prevention of crime. Death, indeed, operates this end most effectually as respects the delinquent; but the great object of inflicting it is the force of the example on others. If this spectacle of horror is insufficient to deter men from the commission of slight offences, what good reason can be given to persuade us that it will have this operation where the crime is more atrocious? Can we believe that the fear of a remote and uncertain death will stop the traitor in the intoxicating moment of fancied victory over the constitution and liberties of his country? While, in the proud confidence of success, he defies heaven and earth, and commits his existence to the chance of arms, that the dread of this punishment will check his pride,—force him, like some magic spell, to yield obedience to the laws, and abandon a course which he persuades himself makes a virtue of his ambition? Will it arrest the hand of the infuriate wretch, who, at a single blow, is about to gratify the strongest passion of his soul in the destruction of his deadly enemy? Will it turn aside the purpose of the secret assassin, who meditates the removal of the only obstacle to his enjoyment of wealth and honors? Will it master the strongest passion and counteract the most powerful motives, while it is too weak to prevent the indulgence of the slightest criminal inclination? If this be true, it must be confessed that it presents a paradox, which will be found more difficult to solve when we reflect that great crimes are, for the most part, com-

mitted by men, whose long habits of guilt have familiarized them to the idea of death, or to whom strong passions or natural courage have rendered it in some measure indifferent; and that the cowardly poisoner or assassin always thinks that he has taken such precautions as will prevent any risk of discovery. The fear of death, therefore, will rarely deter from the commission of great crimes. It is, on the contrary, a remedy peculiarly inapplicable to those offences. Ambition, which usually inspires the crime of treason, soars above the fear of death; avarice, which whispers the secret murder, creeps below it; * * * * threats of death will never deter men, who are actuated by these passions; many of them affront it in the very commission of the offence, and therefore readily incur the lesser risk of suffering it in what they think the impossible event of detection. But present other consequences more directly opposed to the enjoyments which were anticipated in the commission of the crime, make those consequences permanent and certain, and then, although milder, they will be less readily risked than the momentary pang attending the loss of life. Study the passions, which first suggested the offence, and apply your punishment to mortify and counteract them. The ambitious man cannot bear the ordinary restraints of government,—subject him to those of a prison; he could not endure the superiority of the most dignified magistrate, —force him to submit to the lowest officer of executive justice; he sought by his crimes a superiority above all that was most respectable in society,—reduce him in his punishment to a level with the most vile and abject of mankind. If avarice suggested the murder, separate the wretch forever from his hoard; realize the fable of antiquity; sentence him, from his place of penitence and punishment, to see his heirs rioting on his spoils; and the corroding reflection that others are innocently enjoying the fruits of his crime will be as appropriate a punishment in practical, as it was feigned to be in poetical justice. The rapacious spendthrift robs to support his extravagance, and murders to avoid detection; he exposes his life, that he may either pass it in idleness, debauchery, and sensual enjoyments, or lose it by a momentary pang;—disappoint his profligate calculation; force him to live, but to live under those privations, which he fears more than death; let him be reduced to the coarse diet, the hard lodging, and the incessant labor of a penitentiary.' pp. 51—55.

After remarking on the importance of adopting some system of punishment capable of reforming the delinquent and of affording room for correcting a false judgment, both of which are precluded by taking away the convict's life, our author

proceeds to consider the influence of the example of capital executions on society at large, in these words:

'Another consequence of the infliction of death is, that if frequent it loses its effect; the people become too much familiarized with it to consider it as an example; it is changed into a spectacle, which must frequently be repeated to satisfy the ferocious taste it has formed. * * * * Human sufferings are never beheld for the first time but with aversion, terror, and disgust. Nature has strongly implanted this repugnance on our minds, for the wisest purposes; but this once conquered, it happens in the intellectual taste as it does in that of the senses; in relation to which last it is observed, that we become most fond of those enjoyments, which required, in the beginning, some effort to overcome the disgust produced by their first use; and that our attachment to them is in proportion to the difficulty which was conquered in becoming familiarized to them. Whatever may be the cause of this striking fact in the history of the human mind, its effects ought to be studied by the legislator, who desires to form a wise and permanent system. If the sight of one capital execution creates an inhuman taste to behold another; if a curiosity, satisfied at first with terror, increases with its gratification, and becomes a passion by indulgence, we ought to be extremely careful how, by sanctioning the frequency of capital punishments, we lay the foundation for a depravity the more to be dreaded, because, in our government, popular opinion must have the greatest influence on all its departments, and this vitiated taste would soon be discovered in the decisions of our courts and the verdicts of our juries.

But if this punishment be kept for great occasions, and the people are seldom treated with the gratification of seeing one of their fellow-creatures expire by the sentence of the law, a most singular effect is produced; the sufferer, whatever be his crime, becomes a hero or a saint; he is the object of public attention, curiosity, admiration, and pity. Charity supplies all his wants, and religion proves her power by exhibiting the outcast and murderer, though unworthy to enjoy existence upon earth, yet purified from the stain of his vices and crimes, converted by her agency into an accepted candidate for the happiness of heaven. He is lifted above the fear of death by the exhortations and prayers of the pious; the converted sinner receives the tender attentions of respectability, beauty, and worth; his prison becomes a place of pilgrimage,—its tenant, a saint awaiting the crown of martyrdom; his last looks are watched with affectionate solicitude; his last words are carefully remembered and recorded; his last agonies are beheld with affliction and despair; and after suffering the ignomin-

ious sentence of the law, the body of the culprit, whose death was infamy and whose life was crime, is attended respectfully and mournfully to the grave by a train that would not have disgraced the obsequies of a patriot or a hero. This sketch, though highly colored, is drawn to the life; the inhabitants of one of the most refined and wealthy of our state capitals sat for the picture; and although such exalted feelings are not always excited, or are prudently repressed, yet they are found in nature; and in whatever degree they exist, it cannot be doubted that in the same proportion they counteract every good effect, that punishment is intended to produce. The hero of such a tragedy can never consider himself as the actor of a mean or ignoble part; nor can the people view, in the object of their admiration or pity, a murderer and a robber, whom they would have regarded with horror, if their feelings had not been injudiciously enlisted in his favor. Thus the end of the law is defeated, the force of example is totally lost, and the place of execution is converted into a scene of triumph for the sufferer, whose crime is wholly forgotten, while his courage, resignation, or piety marks him as the martyr, not the guilty victim of the laws.' pp. 59—63.

Our author next goes into a variety of considerations in support of his views, all tending to show that the infliction of death at any time as a punishment is unnecessary, impolitic, unjust and hurtful to the good order of society. He concedes, however, and we think wisely, that governments have an undoubted right to inflict it, provided it can be proved necessary to the preservation of public and private peace. There is little use in the distinction of Beccaria on this subject. This eloquent and ingenious apostle of the cause of humanity distinguishes, it is well known, the right of governments, which he defines to be the sum of the smallest portions of the private liberty of each citizen, (*una somma di minime porzioni della privata libertà di ciascuno*)—from the power, which grows out of the supreme law of the safety of the people (*la suprema legge della salvezza del popolo.*) Now this distinction, as its author understood it, however unsound, is a perfectly innocent one, because, although he denies the right of a state to inflict death as a punishment, yet he grants the existence of the power, wherever its exercise can be proved useful and necessary, and therefore leaves the argument just where it would have been without the distinction.* But his disciples by los-

* De' Delitti e delle Pene, c. 28. See also Beccaria's Risposta ad uno

ing sight of the true grounds of the distinction, have strangely misapplied it, in maintaining that capital punishments ought to be abolished for the mere reason that the right to kill cannot, as they say, have been comprehended among the rights surrendered in the social compact. The only intelligible and defensible notion of political right is, that a state has a right to do whatever, on the whole, the best interest of the community requires. It is idle to set about establishing any distinctions in political science, which do not lead to some valuable practical result. Let the advocates of capital punishments prove their utility clearly; this is all we ask of them; and when this is done, we will not merely concede that it is the right of governments to take away life, but we shall maintain it to be their duty.

Mr Livingston concludes his argument by refuting, with much more eloquence than they deserved to have bestowed upon them, the reasons usually urged in favor of capital punishment independent of the question as to the force of its example. The Jewish laws, which the mild spirit of the Gospel has long ago stripped of their authority as positive institutions, —the practice of most nations from the remotest antiquity, which might, with equal justice, be alleged in vindication of all the worst abuses in government and all the weakest and vil-

Scritto che s'intitola Note ed Osservazioni sul libro de' Delitti e delle Pene, pp. 84, 97, where the author explains his sentiments on this point more fully than he did in his first work.—The spirit of the Note ed Osservazioni may be judged of by reading a single sentence. 'Quasi tutto quello,' it says, 'che avanza il nostro autore in questo suo libro, non è appoggiato che su *i due falsi ed assurdi principj, che tutti gli uomini nascano liberi* e siano naturalmente uguali, *e che le leggi non sono nè debbono esser altro che patti liberi di tali uomini*, fatti nell' atto che, per motivo di metter la propria vita in maggior sicurezza, si uniscono in società.' p. 248.—This book, which rings all the changes upon the now exploded prejudices of the last century, shows with what kind of reception the plainest maxims of civil liberty were then apt to be greeted in Italy. How revolting to see the rack and the gibbet elaborately defended in Italy, and in the precincts of imperial Rome, who, during two hundred and fifty years of her greatest glory, when her magistrates and nobles were coming or had come to be princes of the earth by the mere force of their private virtues and public patriotism, would not suffer the infliction of the punishment of death on a citizen, ('non crudelis, sed aliena a republica,' Sallust. Bell. Catilin. c. 51);—Rome, within whose walls the great orator declared the sight, the very mention of a gibbet unworthy of a freeman and a Roman! ('Carnifex vero, et obductio capitis, et nomen ipsum crucis, absit non modo a corpore civium Romanorum, sed etiam a cogitatione, oculis, auribus: harum enim omnium rerum, non solum eventus atque perpessio, sed etiam conditio, expectatio, mentio ipsa denique, indigna cive Romano atque homine libero est.' Ciceron. Orat. pro C. Rabirio, c. 5.)

est prejudices in the whole category of human error,—and the danger of innovation in an age and a country, which owe whatever is most admirable in science or the arts and in social condition to the irrepressible workings of the genius of improvement, objections such as these to abolishing the punishment of death have but a poor chance of success in America. What then are the substitutes proposed to supply the place of the old system of punishment discarded as so objectionable? They are:

'Pecuniary fines.—Degradation from office.—Simple imprisonment.—Temporary suspension of civil rights.—Permanent deprivation of civil rights.—Imprisonment at hard labor.—Solitary confinement during certain intervals of the time of imprisonment to be determined in the sentence.

The advantage of this scale of punishment is, that it is divisible almost to infinity; that there is no offence, however slight, for which it does not afford an appropriate corrective; and none, however atrocious, for which, by cumulating its different degrees, an adequate punishment cannot be found." p. 83.

We have followed Mr Livingston so closely thus far, that, for what remains of his code, where there is less of novelty and more of the uncontested principles of law, we content ourselves with referring to the pages of the Report. We have been attracted to the discussion of the subject by the consideration that even at this day, widely and profoundly as the researches of philosophers have been pushed, there is still much to learn of a subject, which embraces the entire range of man's actions, his physical and moral constitution, habits, feelings, propensities, destiny;—which ascends to the palaces of the rich and powerful, but disdains not to search the cottage of the meanest villager, in quest of useful illustrations;—which lays bare alike the heart of the prince and the peasant, the weak and the mighty, to scrutinize the inmost recesses of the human breast, and view there, undisguised, the passions, the master-springs, that move the vast machinery of the world;—which is of the most deep and vital interest to society, inasmuch as it involves the great question of the preservation of social tranquillity, security, and order, and of the moral discipline of the whole human race. Nor is it the intricacy of the subject alone, that renders it inexhaustible. Where truths in the science of remedial law are so clearly demonstrated as to

be fundamental axioms, still the improvements, which they dictate, remain to be adopted, and men yet obstinately and pertinaciously cling to their inveterate prejudices. The names of two hundred capital offences continue recorded in the statute-book of England. In that country, ministerial influence has not yet ceased to elude, nor ministerial sophistry ceased to resist, the repeal of laws the most absurd in principle, the most pernicious in operation.* But in America, all the most odious features in the penal laws of our father-land, with but few exceptions, have yielded themselves up, and what remains cannot long maintain itself in opposition to the healthful influences of the young Spirit of Freedom. Our emancipation from the tyranny of the feudal institutions is fast approaching its full accomplishment. And Mr Livingston's code, although confined in the immediate sphere of its operation to Louisiana, will sensibly contribute, we doubt not, to the diffusion of an unexceptionably liberal system of criminal law throughout the United States.

Art. XIII.—*Friedrich von Schiller's Gedichte.—Schiller's Minor Poems.*

The genius of Schiller never appears more pleasing or more admirable, than in his minor poems. While the enthusiasm of his own character is very happily expressed in them, and the reflections of a vigorous and well educated mind are joined to the most various kinds of poetic invention, his language is uniformly pure and his style exquisitely finished. We have the elevated sentiments of a poet, conveyed with careful elegance in the most beautiful measures of which the copious German dialect admits, and his pieces are uniformly remarkable for the charm of their numbers and diction. In poetry so much depends on the choice of words, that this alone would ensure him a high reputation. But it is the least praise of Schiller. He is no less distinguished for his genius and the purity of his taste, than for the perfection of his style. In the early part of his literary career, his works were the productions of a mind, which seemed always in a state of excitement. They possess all the vehemence of passionate description, but in his

* Debate in the House of Commons, May 21, 1823.

moral speculations there is nothing of the tranquillity, which belongs to a mind already conversant with those subjects. They give proofs of a constant fever of imagination, of restlessness and anxiety in their author. These first fruits of his genius are rather to be taken as early indications of his extraordinary powers, than as finished specimens of them. But even while his mind was in this unsettled state, Schiller never inclined to the demoralizing principles, which distinguished many of his poetical contemporaries. He was naturally enthusiastic and noble; he believed in virtue and the excellence of human nature, and had an abhorrence of that scepticism, which represents disinterestedness as nowhere existing. He preserves the purest character throughout all his writings, and although one or two small pieces have some allusions which are not altogether free from coarseness, he is never licentious; and all his works show him to have been full of reverence for the sanctity of religion and the domestic affections.

This is no small praise in a poet, who was almost contemporary with Wieland and Voltaire, and who lived in a period, when unexampled popularity was obtained by writers who knew how to join licentiousness and profaneness to wit. But his reputation has been far from suffering from the elevated character of his style and sentiments. There is no lasting poetical fame, except where the eloquence of virtue is united to the inspiration of poetry; and it is hardly less pleasing in point of morals than of good taste to find that, while most of the corrupting writers of his time are forgotten, Schiller is becoming more and more popular; and is hardly less admired at Milan and at Paris, than at Berlin and Weimar.

Schiller belonged to that class of men, who are willing to admire wherever any distinguished virtue is exhibited; and he was far from desiring to take from the great names of antiquity the veneration, with which mankind has been accustomed to regard them. Although his works are full of passages in which he complains of the little sympathy he could find in others, he never despaired of human nature.

The character and feelings of Schiller as an individual appear throughout his poetry. Every sentiment seems to derive its peculiar cast from his own mind, just as certain plants take the color of their leaves from the soil in which they grow. In this he differs remarkably from the poet, who disputes with

him the admiration of his country. Goethe reflects in his poems the feelings of others; Schiller felt deeply himself, and knew how to embody his feelings in verse. In whatever age or country Goethe places his invention, he instantly adapts himself to its manners and tone; Schiller always preserves under all changes of scene the peculiar characteristics of his own mind. The person of Goethe is never seen through his verse; that of Schiller presents itself constantly. It is the German poet in Spain, in Switzerland, in France; seizing on all opportunities of paying tribute to excellence, truth, and liberty. We may learn from Goethe what the world is; but Schiller teaches us what it should be.

That Schiller was a diligent admirer of Virgil, is evident from the general character of his poetry; we have also two books of the Æneid translated by him. The translation is a free one, made in stanzas of eight verses. The Germans, like the Italians, have no fondness for long poems in the measure which we call heroic, and instead of it they adopt either the ancient hexameter, or some one of the favorite Italian stanzas.

We have said that Schiller in the early part of his life possessed too little calmness for successful efforts in poetry. With his riper age, his feelings and the character of his productions were changed. He explains that change in the following verses.

THE IDEAL.

And wilt thou, fond deceiver, leave me,
With scenes that smiled in fancy's eye,
With all, that once could glad or grieve me,
With all inexorably fly?
Can nought delay thy rapid motion?
Can nought life's golden season save?
'Tis vain; eternity's vast ocean
Receives the streamlet's hastening wave.

The dazzling light has long been spent,
Which round the paths of childhood shone;
The chains of fancy all are rent,
And all her fair creations flown.
The pleasing faith has passed away
In beings, which my visions bore;
Reality has made its prey
Of what seemed beautiful before.

As once with vehement desire
Pygmalion held in warm embrace
The statue, till sensation's fire
Glowed in the marble's kindling face;
I threw the arms of youthful love
Round nature, till I too was blest,
Till she began to breathe, to move,
To live on my poetic breast.

The world awakening shared my bliss;
For me the dumb possessed a voice,
Learned to return me love's warm kiss,
Feel my heart's music, and rejoice.
Then lived to me the tree, the rose;
Then sang the fountain's silver fall;
And things, that spiritless repose,
Echoed with joy my spirit's call.

Itself a world, the narrow breast
Aspired with strong, resistless force,
To act and speak, and onward prest
To join in life's exciting course.
While in the bud it lay concealed,
The world appeared a boundless scene;
What have the opening leaves revealed?
How little! and that little mean!

By daring mind endued with wings,
Blest by his visions false but gay,
Untamed by anxious care, how springs
The youth along existence' way!
There's nought so lofty, nought so far,
To which his wishes may not rise;
E'en to the heaven's remotest star,
On wings of bold design he flies.

How swiftly was I borne along!
And happy feared nor toil nor care!
And still with winning grace the throng
Before me danced of forms of air;
Love with sweet looks that ne'er could frown;
Joy with his golden garlands bright;
Glory adorned with starry crown;
And Truth, that blazed in solar light.

But ah! how soon these guardians flew
Far from my side, ere life's mid-day;
The airy band became untrue,
And one by one they passed away.

His rapid pinions Joy extended;
The wells of Knowledge still were dry;
Doubt's heavy clouds round Truth ascended,
And hid her light from mortal eye.

I saw, too, Glory's holy flowers
Round common brows profanely twined;
And, Love, how swiftly flew thy hours!
How soon I left thy spring behind!
Still and more still the scene became;
More lonely seemed the rugged way;
And dying hope a pallid flame
Scarce threw across the darksome way.

Of all that gay and noisy crowd
Will none with faithful fondness wait,
To raise me when by sorrow bowed,
And follow me to death's dark gate?
O Friendship! thou my age shalt brighten,
Thou, who dost heal our every wound,
With love the toils of life dost lighten,
Thou, whom I early sought and found.

And thou, whose spell like hers can charm
The spirit's storms, beloved Employ;
Thou, who with strong, unwearied arm,
Dost slowly raise, but ne'er destroy;
The building of eternity
Thy hand with patient toil uprears,
And pays the debt before we die,
Of minutes, seasons, days, and years.

In his critical opinions on subjects connected with poetry, Schiller shares the free spirit of his literary countrymen. The rules of the French drama were insupportable to him, and when Goethe prepared the Mahomet of Voltaire for the German stage, Schiller expostulated with him, 'that he, who was already crowned as the priest of the tragic art, should sacrifice on the broken altars of a foreign muse.'—'The genius of the German has dared of itself to enter into the sanctuary of the arts, and has advanced in the footsteps of the Greeks and the English.'—'Poetic excellence can be created by no Louis; it borrows nothing from earthly majesty; it allies itself with nothing but truth.'

It is indeed one of the most distinguishing features in the history of modern German literature, that the greatest efforts

have been made by persons of the inferior classes of society, and that they have received little support from their princes and little patronage from the nobles. 'No Augustan age,' says Schiller, 'bloomed for the German Muse; the kindness of no prince, like the Medici, smiled on her; she was not fostered by fame; nor did she unfold herself in the beams of royal favor. From the greatest of German heroes, from the throne of Frederic the Great, she withdrew without protection and without honor. The German may say with pride, that he has himself created his own merit. And hence the poetry of German bards rises in a bolder arch, and pours with a more copious stream.'

To his national feelings Schiller unites a tinge of melancholy. He was fond of philosophy, and, though he never pursued those studies with method, he was accustomed to speculate boldly on the duties and destiny of man. He seems to have had in his own mind an image of moral and mental greatness, and he strove to realize that image in the world. He was of course disappointed; but, far from abusing his fellow-men for their want of the virtues which he believed essential to the dignity of our nature, he looks forward the more earnestly for better days.

HOPE.

Man loves of improvement to talk and to dream,
That may bless some future race;
He aims at success, and its golden beam
He pursues in restless chase.
The world grows old, and grows young again,
But the hopes of improvement forever remain.

'Tis by hope that man into life is led;
She flutters round boyhood's bloom;
O'er youth her brilliant enchantments are spread;
She sleeps not with age in the tomb.
Life's weary labors are closed in the grave;
But o'er it the branches of hope greenly wave.

'Tis not a vain fancy from folly that came,
And flatters to cheat the mind,
How deeply each bosom its truth can proclaim,
'For improvement is man designed.'
And ne'er does the voice from within us deceive
The spirits that hope, or the hearts that believe.

The personification of nature is common to all great poets. The works of Scott, and still more of Byron, abound in them. It forms one of the charms of oriental literature, and when it is not carried so far as to seem insincere, its effect is always pleasing. In Schiller it is united with depth and vigor of conception; but some of the inferior poets have almost no other inspiration. Descriptive poetry, under its best forms, is not of the highest order; it is a greater effort to unfold the passions, than to sketch a landscape, and we are soon tired of the most highly wrought pictures of natural scenery, unless there is some Rinaldo in peril, or Erminia in need of seclusion and shelter. Some have endeavored to compensate for the lifelessness of description by supposing the plants possessed of thought and language, and relating their loves and jealousies. Though this may be exceedingly pretty in a short poetical composition, yet when extended through a long poem it is necessarily dull.

The fondness of Schiller for nature is of a higher kind. He seems to have regarded her as a companion, that suited the pensive character of his mind and encouraged in him his favorite reflections. This is seen in no poem more remarkably than in the classic elegy, 'The Walk,' a piece of about two hundred lines; in which the poet gives way to the contemplative mood, occasioned by a solitary excursion. He passes through the meadows and woods, and his soul opens to the loveliness of the landscape. The tranquillity of country life is contrasted with the bustle of the distant city; the prospect of which excites reflections on social union, the progress of the arts, the prosperity, revolutions, and ruin of states, the perpetual change of the governments of men; while nature, in unchanging beauty, remains true to her ancient law, extending the same azure above, the same verdure beneath the nearest and the remotest generations, and the sun of Homer smiles now on us.

Schiller was a lover of the antique. In one of his tragedies, which is full of lyric beauties, he has attempted to revive the ancient chorus; but he is much more successful in imitating the tone and feelings of the ancients in some of his smaller poems. The nuptials of a daughter of Priam are celebrated with royal pomp; 'Cassandra' rushes from the assembly, for her prophetic eye has already had a vision of the

impending ruin of her country, and all the horrors which her father's family were to undergo. In 'The Triumphal Banquet,' after Troy had been taken, the Grecian heroes pledge each other at the board, heedless of the dangers and wretchedness, which awaited many of them on their return. This short poem possesses high tragic interest, for Schiller very ingeniously intersperses in their conversation those moral reflections, which may remind the reader of their melancholy end. There is more richness of imagination and glow of language in 'The Eleusinian Feast,' in which the influence of the gift of Ceres on human society is magnificently described with all the life and beauty of ancient mythology; and in 'The Gods of Greece,' he explains the influence of that mythology on the imagination, and the cheerful character of that religion, according to which, 'a kiss took away the last breath of life; a Genius inverted his torch; the child of a mortal held the balances at the entrance of Orcus, and the furies themselves relented at the pathetic complaint of the Thracian.'

There is another poem, less celebrated than the 'Eleusinian Feast,' entitled 'The Complaint of Ceres,' in which the goddess gives way to her anguish, on finding that her search for her daughter has been ineffectual.

THE COMPLAINT OF CERES.

Gentle Spring is reappearing;
To the earth new charms are lent;
Hills their robes of green are wearing;
Winter's icy chain is rent;
Cloudless ether smiling glasses
Brilliant azure in the flood;
Airy Zephyr mildly passes;
Every twig puts forth its bud.
In the grove awakes the strain;
But the wood-nymph bids me mourn,
Crying, Flowers return again,
Hope not for thy child's return.'

Ah! how long, how long I wend
O'er the earth, and search in vain;
Titan, all thy beams I send,
Tidings of her fate to gain;
No one yet could aught disclose
Of the face I love so well;
Day, which all things earthly knows,
Of the lost one nought can tell.

From my side, Jove, hast thou torn her?
Or hath, by her beauty won,
Direful Pluto downward borne her,
Where hell's rivers darkly run?

Who will to the darksome strand
Message of my anguish bear?
Charon's bark still leaves the land;
None but shadows enter there.
Heavenly eyes can ne'er behold
Lands, where rules eternal night;
Long as Styx his waves has rolled,
Have they borne no living wight.
Downwards thousand pathways go;
Ah! no path conducts on high;
No one brings a daughter's wo
To a troubled mother's eye.

Mothers, born of Pyrrha's race,
Ye, who breathe life's transient breath,
Ye regain a child's embrace,
Following through the flames of death;
They who dwell near Jove his throne,
Ne'er approach the darker strand;
Deathly fates! the gods alone
Fall not by your dreaded hand.
Hurl me into night of nights
From the golden halls of day;
Heed no more the goddess' rights;
Ah! the mother's torment they.

Where she sits in joyless sheen
At her dismal spouse's side,
Thither gently to the queen,
With the shades, O might I glide!
See! her eyes, all wet with tears,
Towards the light in vain are rolled;
Wandering seek the distant spheres,
Fail her mother to behold;
Till delight her form revealing,
Breast to breast we warmly press;
And e'en Orcus, wakes to feeling,
Sheds the tear of tenderness.

Vain desire! O fond lament!
Days in equal circles move,
Calmly on their courses bent;
Changeless stands the will of Jove.

He, from lands of gloomy fright
Turns away his blissful head.
Once if snatched to realms of night,
For eternity she's fled,
Till the streams, which darkly swell,
With Aurora's tints shall glow,
And amidst the gloom of hell
Iris spread her beauteous bow.

And remain no marks of love,
Of the past no soothing signs?
No reminding pledge to prove,
Fondness still the parted joins?
Can no more affection's thread
Daughter to the mother tie?
Nought the living to the dead
Still in closest league ally?
No! she is not wholly lost;
No! we are not all bereft;
Kindly hath the heavenly host
Still a mutual language left.

When the Spring's fair children die,
At the North's destroying breath
Leaf and flower all withered lie,
Mournful stands the naked heath;
Then of veriest life I'll take
From Vertumnus' copious horn,
Offering to the Stygian lake
Life's quick seeds, the golden corn.
These in sadness I'll inter,
On my daughter's heart to lie;
Thus be found a messenger
Of my love and misery.

When in even dance the hours
Gladsome lead the springtide on,
Will the dead gain quickening powers
From the life-inspiring sun.
Germs, which in the lap of earth
Lifeless seemed to human view,
Wrestle till they burst to birth,
In the realms of varied hue.
Whilst the branches soar in air,
Seek the timid roots the night;
To sustain it vie in care
Styx's and the ether's might.

Half in death's dark land they sink,
Half in that of life appear,
Heralds from the Stygian brink,
Sweet the voice, they upward bear.
Hell may round my daughter fling
Floods unpassed and gloomy air;
In the tender shoots of spring
Still her own dear lips declare,
That though far from day's glad heat,
Where the shadows mournful go,
Still her heart can warmly beat,
Still her breast with fondness glow.

Then let's bring our thanks to you,
Children, that on meadows blow;
With the nectar's purest dew
Shall your chalice overflow.
All in light your flowers I'll dip.
With the rainbow's fairest ray
Will I paint each leafy lip,
Like the face of rising day.
Then in springtide's cheerful glory,
And in withering autumn's sadness,
Feeling hearts may read the story
Of my anguish and my gladness.

In the choice of his subjects Schiller was bold and poetical. At a time, when the maid of Orleans had become associated with licentious wit and ridicule, Schiller ventured to vindicate her character, and redeemed her name from the degradation, not to say infamy, into which it had sunk, in the hands of her countryman. There is one subject, which is, we believe, entirely of Schiller's invention; 'The song of the bell; vivos voco, mortuos plango, fulgura frango.' Workmen, who are casting a bell, describe all the events, which are solemnized by its voice; the morning of birth; the wedding-day; fires and funerals; the hour of vespers, when it is the signal of repose and domestic quiet; times of danger and alarm; wars and seditions. The bell which they are making they name Concordia, and raise it up, that 'high above earthly life, it may swing in the azure tent of heaven, be the neighbor of the thunder, and become a voice from above, like the bright host of the stars.' This poem addresses itself to all that is gentle and good in our natures; it is rapid, eloquent,

and beautiful; it is finished with consummate care, and its measure, varying with the sentiment, is always harmonious and expressive. It has lately been translated by Lord Gower.

The Germans have ever been celebrated for their ballads. The 'Leonora' and 'Wild Huntsman' of Bürger are familiar to the lovers of translated verse; and a translaiion of Goethe's 'Erl king' was, we believe, one of the earliest efforts of Sir Walter Scott. The ballads of Schiller are more pleasing than those of Bürger and Goethe. They are almost always of a cheerful character; but where they are sad, they have the sadness of sentiment and not of horrors. 'Fridolin' is of all his ballads the simplest in point of story and manner, and we pray our readers' favor for the version, which we attempt for their amusement.

FRIDOLIN, OR THE JOURNEY TO THE FORGE.

I.

A guileless page was Fridolin,
As from my tale ye'll learn;
He served with heart, that knew no sin,
The Countess of Savern.
She was all gentleness to him;
But any wish of hers, or whim,
The wayward bent of woman's will,
He would have hastened to fulfil.

II.

From morning's dawn, when day first shone,
Till evening's twilight died,
He lived for her commands alone,
Yet ne'er was satisfied.
And said the lady 'Toil no more,'
His glistening eye with tears ran o'er;
And ne'er from labour would he rest,
Till weariness his limbs opprest.

III.

And hence above the servant crowd,
She loved the youth to raise,
And from her beauteous lips there flowed
Incessantly his praise.
Nor of her servants seemed he one;
Her heart esteemed him as a son;
And oft her eye reposed with joy
On the sweet features of the boy.

IV

For this there rose in Robert's breast,
The huntsman, deadly hate;
His envious bosom never ceased
With malice to dilate.
And to the count, whose honest heart
Was open to the traitor's art,
And light would kindle, he drew nigh,
To plant the seeds of jealousy.

V.

And thus with cunning words he spake.
'O count, I deem you blest;
No jealous doubts your slumbers break,
Nor haunt your golden rest.
For you so chaste a spouse possess!
Discretion guards her loveliness;
And all the wiles of wooing youth
Were vain against her virtue's truth.'

VI.

At this the count with frowning brow
Exclaimed—'What say'st thou, knave?
I build no trust on woman's vow,
Unstable as the wave.
But though vain words their hearts allure,
My lady's troth I hold secure;
Love's eye on her none dare to turn,
Or woo the spouse of Count Savern.'—

VII.

The wily keeper speaks—''Tis clear,
Contempt the fool deserves,
Who, born to serve thee and to fear,
Thus from his duty swerves,
And to the lady he obeys,
An eye of longing dares to raise.'
Trembling with wrath, the count replies,
'The villain, that hath dared it, dies.'—

VIII.

'And can it be? the public tale
To thee hath ne'er been told?
Yet what my Lord desires to veil,
My lips shall ne'er unfold.'—
'Speak, wretch, or die; what hast thou seen?'
Exclaims the count with threatening mien,
'Who hopes her favor to engage?'—
'I speak, sire, of the fair-haired page.

IX.

The stripling hath a pleasing form.'
Thus he deceives his lord,
Whose blood by turns ran cold and warm,
And thrilled at every word.
'And have you truly never known,
That he hath eyes for her alone,
Of you at table hath no care,
But languishes behind her chair?

X.

And in these verses is confessed
His passion's bold desire'—
'Confessed!'—'He hath the countess pressed
To love with equal fire.
The lady is discreet and good,
She feared for him your angry mood;
'Twere useless to repeat the tale;
For what to you could that avail?'

XI.

At this the Count grew wroth, and rode
To where a forest rose,
And fires in many a furnace glowed;
There melted iron flows;
Early and late with zealous speed
The glaring flames his servants feed;
The sparks ascend; the bellows play;
As though the rocks would melt away.

XII.

There might you see their wondrous force
Both fire and water blend;
To urge the wheel's revolving course
Their power the torrents lend;
The works keep up their ceaseless chime;
The heavy hammers strike in time;
And e'en the iron pliant grows,
Subdued and shaped by mighty blows.

XIII.

And at their master's beck there come
Two servants from their task;—
'The first, whom I shall send from home
To greet you, and to ask
If ye've obeyed your master well,
Him seize, and throw in yonder hell;
The flaming furnace be his grave;
I would not see again the slave.'

XIV.

Infernal joy the demons feel,
To hear that dark behest;
For hardened were their hearts like steel;
No mercy touched their breast.
Aloft the smoking pile they raise;
The flames ascend with crackling blaze;
They thirst for crime, and long to slay,
With murderous will, their destined prey.

XV.

And Robert then his comrade calls,
Who nought of malice knew;
'Now haste thee to our master's halls;
He needs thy service true.'
The count he spake to Fridolin,
'Straight wend to where my forge's din
Is heard; and of my slaves inquire,
If they've fulfilled their lord's desire.'—

XVI.

'Tis mine,' he answers, 'to obey,'
And soon prepares to go;
Then paused—'Perchance my mistress may
Have duties for me too.'
Before the Countess soon he bows;
'Forth to the forge thy servant goes;
Thine is my duty; lady, say,
Thee can I serve upon the way?'

XVII.

Thereat the Countess called him near,
And spake with gentle tone;
'The holy mass I long to hear;
But sickness wastes my son.
Go then, my child, and on the way
For me in still devotion pray;
With penitence thy sins efface;
And then for me entreat heaven's grace.'

XVIII.

The sacred charge was doubly sweet;
He rose and journeyed fast;
Yet through the neighboring village street
He had not fairly passed,
When on his ear distinctly fell
The sacred curfew's mellow peal,
Which summons sinners to repent,
And taste the holy sacrament.

XIX.

'To fly from God were surely sin
When in the road we meet.'*
He sees the church, and enters in,
Yet hears few coming feet;
For 'twas the harvest-tide, and then
Its toil detained the husbandmen;
None came the sacred hymns to sing,
Or chant the mass, or censer swing.

XX.

At once the page resolves to stay
And serve as sacristan;
'Sure this,' thought he, 'is no delay;
First serve the Lord, then man.'
The belt and stole, which priests should wear,
He hangs upon the priest with care;
The burnished cups he next displays,
Preserved for use on holy days.

XXI.

When this with cautious hand was done,
Before the priest he stands;
Devoutly to the shrine moves on,
The mass-book in his hands.
And to the right and left he wheels,
And at the signal meekly kneels;
And when the words of 'Sanctus' came,
His bell thrice tinkled at the name.

XXII.

And when the priest with reverence bowed,
And knelt before the shrine;
And high, with hands uplifted, showed
The Eucharist divine;
The sacristan, observing well,
Rings loudly with his little bell;
All cross their brows, their bosoms beat,
And Christ the Saviour kneeling greet.

XXIII.

Thus careful he performed each part
With readiness and skill;
He knew the sacred rites by heart,
And served with cheerful will;
Served till the close unwearied thus;
Till with 'Vobiscum Dominus'

* The Eucharist is carried in procession; Fridolin meets it, and the lines of the ballad allude to the Roman Catholic belief respecting its nature.

The priest before the people bends,
The holy service blessing ends.

XXIV.

Then where the priests their vessels kept,
The sacred gear he laid;
With busy hand the church he swept;
This done, no longer stayed;
But now, with conscience in repose,
Straight to the forge with speed he goes;
And yet his heart still bids him say
Twelve Pater-Nosters by the way.

XXV.

And as he sees the curling flames,
And near the workmen stand,
'Have ye obeyed,' the youth exclaims,
'Our master's strict command?'
The hateful demons grin at this,
And pointing to the hot abyss,
'We merit trust, the Count will own,
For nothing's left of flesh or bone.'

XXVI.

And swift the nearest pathway home
The page returning took;
But as his master saw him come,
He gazed with doubting look.
'Whence com'st thou, wretch? I fain would know.'—
'I come from yonder forge.'—'Not so;
Or hast thou loitered by the way?'—
'My lord, I tarried but to pray.

XXVII.

As from thy face my steps I bent
This very morn, forgive,
To ask my duty first I went
To her, for whom I live.
"Go, hear the mass," my lady said;
Her words I willingly obeyed;
And thrice my sacred beads went through
For her salvation and for you.'

XXVIII.

The Count was wrapt in deep amaze,
And horror o'er him fell;
'What answer, where the forges blaze,
Was made thee? Quickly tell.'—

'They pointed to the curling smoke,
And darkly thus the ruffians spoke;
"We merit trust, the Count will own,
For nothing's left of flesh or bone."'

XXIX.

'And Robert?' quick with curdling blood
The Count impatient cried;
'This morn I sent him to the wood;
Hast thou his track espied?'—
'In field and forest, sire, I've been,
But Robert's footsteps have not seen.'—
'Now,' cries the Count, and looks aghast,
'Our God himself hath sentence passed.'

XXX.

The Count, unused to actions bland,
Beyond his wont grew kind;
And grasps his faithful servant's hand,
And hastes his spouse to find.
'I pray thy favor for this child;
No angel is so undefiled;
The traitor's malice is revealed;
God and his hosts the guiltless shield.'

Throughout the poetry of Schiller the chaste and delicate character of his mind is apparent. He was fond of purity and virtue, of studious retirement and domestic happiness. He has several little pieces, in which he elegantly expresses his admiration of woman, and his female characters are often invented with peculiar felicity. 'The Girl from abroad,' 'The Voice of a Spirit,' 'The Maiden's Complaint,' are three beautiful specimens of his manner in this department of poetry. He has contrasted in one of his poems the character and offices of woman and man. This piece is a favorite with all lovers of the German muse; but in attempting to translate lines on a subject, in which every man is too much interested to adopt without addition the sentiments of another, a literal version has seemed impossible, and nothing has been produced but a feeble imitation.

THE DIGNITY OF WOMAN.

Honour the fair; for of beauty the daughters
Light up the rainbow on life's stormy waters;
Roses from Paradise they intertwine
With the dark threads, which destiny's weaving;
Gladness to hearts that are lonely and grieving,
Beams from their eyes, bright with mildness divine.

On the spirit's boldest pinion
Man through nature's circle floats,
Bows to passion's full dominion,
Loves her ever-varying notes;
On the distant hope he seizes,
Follows that, which gleams afar,
And the transient dream, that pleases,
Chases to the farthest star.

Woman with magical, eloquent glances
Calls back the wanderer that rashly advances,
Chaining affection to home's cheerful sphere;
Nature, his heart 'mid her children retaining,
Bids him, discarding his restless complaining,
Trust in their love, and find happiness here.

On desire's broad, boundless ocean
Man, the fugitive, is tost;
'Mid his bosom's wild commotion
All the softer joys are lost;
Soon destroying what he raises,
Never ends his passions' strife,
And the pile, when glory blazes,
Lights him through the vale of life.

Mild, and contented with tranquiller hours,
Woman delights in the moment's fair flowers,
Happy—for innocence always is gay;
Oft at the altar in purity kneeling,
Breathes she the prayer of devotion with feeling;
Angels, ye smile, as around her ye play.

Proudly on himself relying,
Dark his breast, his heart a waste,
All the threats of fate defying,
How shall man love's blessings taste?—
Joys of hearts with friendship glowing,
And the sweet exchange of souls,
Love's pure stream, that ever flowing
Tides of rich enjoyment rolls?

But as from Æolus' harp when 'tis shaken
By the light breeze, notes of harmony waken,
So beats the sensitive heart of the fair;
Love's holy plants in her breast gaily flourish;
Plants, which the regions of purity nourish;
Hallowed and blessed be the fruit that they bear.

In the fields of honor roving,
Lost amid her dazzling ways,
Power and fame and splendor loving,
Man ambition's voice obeys;
And his heart is passion's dwelling,
Filled with wishes dark and wild;
Eris' hundred voices swelling
Rage, where Charis never smiled.

Spirits of war, to the fight fiercely rushing,
Woman disarms; every wind sweetly hushing,
Stills the worst waves of the stormiest sea.
Peace, canst thou find in the world's wide expansion
Rest for thy wings? Tell me where is thy mansion?
Daughter of innocence, where but with thee?

Schiller was happy in private life, and he deserved to be so. He gained also what to the poet is more desirable than private ease; he gained that which is the best inspiration of the bard, and the best reward of bravery,—that which made Hector valiant, and the Lacedemonians temperate,—that which best encourages eloquence and excites to mental labour,—the Praise of Woman. He is the great favorite of his fair countrywomen. To them he seems to appeal with a modest confidence in his own merit and the purity of his works. 'In the female forum,' says he, 'the judgment of individual actions may be wrong; the judgment of character never.' 'The opinion of man,' he expresses himself in a distich, 'is founded on reason, that of woman on her feelings; when she does not feel, woman has already passed sentence.' And when he takes leave of his reader, and modestly speaks of the nature of his poems and of whom he would gain the approbation, he says, 'The echo of them will be lost, when the season is gone by; the desire of the moment gave birth to them; they fly away in the light dance of the hours; only if they deserve a crown, may it be from the virtuous, from those to whom truth is pleasing, but for whom gaudiness has no charms; from those who possess hearts to discriminate and to cherish the beautiful.'

Art. XIV.—*New Ideas on Population, with Remarks on the Theories of Malthus and Godwin, by Alexander H. Everett, Chargé d' Affaires of the United States of America at the Court of the Netherlands.* 8vo. London printed, Boston reprinted.

We cannot better introduce this essay to the notice of our readers, than by an extract from the preface:

'The following tract was prepared for publication, upon the continent, last winter. A reperusal of the essay of Mr Malthus on population, and some conversations, which I held at the time with a friend upon the subject of it, suggested to me certain views, which I thought new, and which are quite at variance, with the conclusions of that eminent philosopher. Without feeling any extraordinary confidence in my own ideas, especially where they differ from those of an author of great and just celebrity, whose theories have been sanctioned by the favorable opinion of many competent judges, I have nevertheless concluded to submit these views to the public. * * * * * *. Upon my arrival in London a few weeks since, for the purpose of superintending the impression of the work, I took an opportunity of mentioning the subject to my illustrious friend, Sir James Mackintosh, and of explaining to him the general scope of the argument. This great statesman and philosopher, whose name I feel it a high honor to be able to mention in connexion with my own, upon learning that the Essay, which I had prepared, was intended in part to correct the theory of Mr Malthus, kindly invited me to go down with him to the East India College, and converse with that gentleman on the subject. I accepted this proposal with much pleasure, as well from a natural desire to make the acquaintance of so eminent a writer, as from the reflection, that if I had accidentally taken up any misconception of his views, I should probably be able to rectify it by a free communication with him, upon the points in controversy. Had I found this to be the case, I was fully prepared to sacrifice my own ideas and to suppress the work.

'I had always been highly gratified with the candid and temperate tone, that distinguishes the writings of Mr Malthus, although I have not been so fortunate as to agree with him in his leading principles;—and I hope that I shall not be thought to pass the bounds of delicacy in adding, that I found his conversation the perfect counterpart of his works. I have rarely met with a finer specimen of the true philosophic temper, graced and set off by the urbanity of a finished gentleman, than is seen in his per-

son. I feel myself greatly indebted to him for the very hospitable reception, which he was pleased to give me, and for the kindness and courtesy, with which he entered into all the explanations that I requested in regard to his opinions. I should pay him a very poor compliment, if I were to suppose it possible, that he could be offended by a free expression of opinions different from his own: and I trust that there is nothing in the tone and manner of the following tract, that will tend in the slightest degree to wound his feelings. * * * * *. It would be an unbecoming violation of the confidence of private intercourse to detail particularly the conversations, which I held with Mr Malthus on the subject of this essay: and it would also be useless for the present purpose, as very little if any thing was said on his part, that is not contained in his printed work, or on mine, that will not be found in the following tract. After a full and free discussion of all the points in dispute, I was satisfied that the difference of opinion between us did not arise from any misunderstanding on either side, but from a difference in our modes of considering the subject, resulting perhaps originally from accident, but confirmed by habit and not to be affected by a few conversations. I had therefore no reason to change my intention of publishing the present work.

'It was suggested to me by Mr Malthus, that the leading principle maintained in it is the same in substance with that of a work on Population by Mr S. Gray. I had never read the work of Mr Gray, and have not had an opportunity of consulting it since, for the purpose of comparing his ideas with mine. Should they be in fact the same, my views, though original, would not be entitled to the name I have given them of *new ideas*. Even in this case, however, as the work of Mr Gray does not seem to have made much impression upon public opinion, a republication of the same views, by a different hand, in a new form, might not be without its use. But I am inclined to think, from a hasty reference to some passages of his book at the house of Mr Malthus, and from the observations of that gentleman upon his principles, that he has not anticipated the theory of the present essay, in its most essential points.'

Not having ourselves had an opportunity of seeing the work of Mr S. Gray, we are unable to give an opinion, how far he has anticipated Mr Everett in the present case. But we find in the New Monthly Magazine for 1821, Vol. I. p. 195, an essay on the theories of Godwin and Malthus, where some of the leading points of Mr Everett's view of the subject are clearly stated. We perceive, however, from a comparison of

his work with the essay in the magazine, that the coincidence is purely accidental, and affording therefore a strong presumption of the accuracy of the opinions, which have thus suggested themselves without communication to several independent thinkers and writers. We beg leave also to add that the same well written essay in the magazine, has cost us the pains of remoulding the observations, which we had prepared to offer our readers, on the subject of Mr Everett's work, part of which we found to have been anticipated, and part to require to be fortified against opposite statements by the ingenious writer of that article.

The very important subject of Population became matter of controversy, in the following manner, which we cannot better state than in the words of the writer in the New Monthly Magazine.

'Mr Malthus informs the public, in the preface to his *Essay on Population*, that that work was first suggested "by a paper in Mr Godwin's Political Inquirer." The paper to which Mr Malthus refers is, we believe, that entitled "of riches and poverty," in which Mr Godwin indulges in some speculations upon the accession of happiness, that would result to the human race, from an equal distribution of leisure and labor, or (which he regards as the same thing) of riches and poverty.

'For the purpose of showing, among other matters, that these speculations upon political systems, founded on the principle of equal property, were utterly vain, and that no society in which they were attempted to be realized could last a single generation, Mr Malthus was induced to write his "Essay on Population." The object of that work is to prove that there is a law of human nature, which Mr Malthus calls the principle of population, by which man multiplies his kind more rapidly than his subsistence; a law, to use Mr Malthus' own words, "by force of which, man has a tendency to increase in a geometrical progression, whereas his subsistence can only be increased in a concurrent arithmetical progression."'

It was by this course of argument, that Mr Malthus met the suggestions of Godwin, in favor of extravagant schemes of political reform. In the language of Mr Everett, 'it is in fact somewhat singular, that while the immediate object of Godwin was to demonstrate the expediency of practical reform, and that of Mr Malthus to prove its inutility, the theories of both these writers admit on general grounds, of precisely the

same answer. While Godwin considers political institutions as absolutely mischievous, Malthus affirms that they are completely indifferent. The true answer to both is, that they are neither mischievous nor indifferent, but extremely valuable : that the origin of evil is not to be found in the existence of society, nor in any supposed law of nature, which creates a necessity of perpetual famine, but in the primary constitution of the universe.'

The work of Malthus on Population is certainly the production of a very powerful mind, furnished with all the information which books can afford, and possessed of the additional light to be derived from personal observation in foreign countries. In those chapters devoted to the consideration of the subject of 'the checks of population' in the principal countries of the earth, a mass of important facts is very ably condensed into a small compass. The subsequent portion of the work, principally on the condition of the poor, is replete with views equally correct and ingenious, and suggestions of the last practical importance, though mingled also, as we conceive, with grave errors. We cannot but regard it as a very singular circumstance that a work so important and valuable, the production of a very ingenious mind acting on materials collected with great diligence and matured with great deliberation, should start with a proposition in itself paradoxical, and, if not perfectly idle and nugatory, contradicted by the whole tenor of the work which it introduces. Such we esteem the proposition that 'Population tends to increase geometrically and food arithmetically, and that of course the former is always pressing on the latter.' We, in the first place, apprehend that this proposition conveys no very distinct ideas to the mind of any reader. The scientific terms in which it is conveyed, in an unavailing attempt to impart mathematical accuracy to moral topics, really add nothing to the clearness of the reader's ideas; and, if we do not deceive ourselves, either mean nothing, or mean what is manifestly false and impossible. To say that population increases geometrically and that food increases arithmetically, is of itself to say nothing. To give the proposition its significance, it is necessary to add, that if the population and food be compared with each other *at certain fixed intervals*, it will be found that they have a tendency, the one to a geometrical and the other to an arithmetical progression, con-

temporaneously. It would of course be very possible that the population should increase geometrically, but slower than any assigned rate, and food arithmetically faster than any assigned rate.

But if Mr Malthus' theorem intend, as there is no doubt it does, that at the same stages of the progression, population increases geometrically and arithmetically; that is, for instance, that population may double every twenty-five years, and increase as 2, 4, 8, 16, while food will increase only as 2, 4, 6, 8, so that at the end of the fourth period of twenty-five years, there will be eight times as many people, with only four times as much food, then it needs only be said, that the thing is manifestly impossible. To suppose it, would be to suppose that half the food feeds twice the number of mouths, and to contradict the principles, which Mr Malthus has himself many times repeated, that the population cannot advance beyond the food.—Mr Malthus has in many parts of his work and in several connexions urged that the food must precede the population, and this by natural, invincible necessity. He has made this the real basis of some of the most valuable parts of his treatise. How then can it be said that population increases geometrically and food arithmetically in equal periods, when it is essential to the increase of population that the increase of food should go before it? If it be true that every man lives by eating, can any thing be plainer than that the food must increase as fast as the population?

But Mr Malthus may reply, that he speaks only of tendency;—that population *tends* to a geometrical increase and food to an arithmetical. This language, however, savors to us of an unprofitable abstraction, and its ambiguity is justly criticised by the writer in the New Monthly Magazine. *To tend* can express nothing but the natural constitution, the primary law, which God has given for the regulation of the increase of man. If it is one law of our nature that food must support life, and that population can increase no faster than food increases to nourish it, it is surely idle to say that population tends to increase faster than food. It is equivalent to saying, that if men could live without eating, they would multiply more rapidly, than while their numbers are limited to the supply of food. That man can increase no faster than his food, is not only true in itself, but is asserted in numerous

places of Mr Malthus' work, as a law of our nature. That he should have overlooked it, while urging his famous mathematical proposition, is the more astonishing, when we consider the circumstances on which the increase of food depends. Food requires land to grow on; land is limited, and cannot increase; therefore Mr Malthus gives food only an arithmetical rate of progress. But how aptly might one object to his distinction between a tendency to a geometrical progression and an actual geometrical increase in the case of population; that food also *tends* to a geometrical increase and by a much more rapidly advancing series. It is true, Mr Malthus objects, that, as the quantity of land in every country, as well as in the whole earth, is limited, cultivation would, after a while, occupy it all, and after this period all increase of food must result from laborious improvements in the processes of industry on the same spots, and therefore be arithmetical. But it might be retorted with equal force, that population only *tends* to a geometrical increase, and can actually advance no faster than food. If food is checked by the geographical boundaries within which it is raised, population is also checked by food. As to fact, then, population is no more rapid in its progress than food; as to tendency, in many respects far less so.

But it is time to drop this ill applied term, which has perplexed, more or less, almost every part of Mr Malthus' inquiry. Though when words are explained, there is no objection to speaking of the *tendency* of food to increase, yet it is plain that there is no accuracy in the expression, and that it ought not to find entrance into a proposition so exact, as to be couched in mathematical language. Food as such, whether animal or vegetable, has no tendency to increase at all. Animals, indeed, in their free state, may increase in the geometrical progression, and in much more rapidly returning periods than man; and the grains and other vegetables which make up his food increase infinitesimally faster, in the natural law of their multiplication, than the lord of creation. But neither animals nor vegetables, as subjected to man and cultivated by him, can be said to tend of themselves to increase. They require to be preserved, husbanded, reared, and multiplied, by human care. Vegetable food—grains and roots—ripen and are gathered into barns. Here they have no tendency but to speedy dissolution. Before they can increase as food, man

must separate a portion to be planted for a new harvest. How fast, as food, they will multiply, depends, therefore, altogether on the quantity which man chooses to plant from year to year, and the pains and skill he may bestow on the culture of it. So of animal food. Animals, in subjection to man, become a part of his food. How rapidly the amount of this food will increase depends upon the number of the young of their various races—calves, lambs, pigs, &c. which the owners will save from the shambles, and rear for the increase of the stock. The fishes of the sea are a part of our food. Their natural increase is almost infinite; but their amount as food for man increases only with the pains, care, and numbers of persons devoted to taking them. The result of the whole then is, that the preparation of food, which Mr Malthus has spoken of as a thing which increases by a law of its own, is an affair purely of man's agency.

Hence, therefore, the fallacy of the different ratios of increase of man and his food. Food is produced by human agency, availing itself, it is true, of the principles of natural growth, and limited within certain bounds. Man cannot grind flour out of stones, nor pasture cattle on the sea. But what food he does gather and consume, is the voluntary product of his own industry. This teaches us at once to suspect the propositon that population advances by a more rapid increase than food. All men must eat, all wish to eat, all will die if they do not eat; and the food by which all are supported must be the product of their labor. There is really, therefore, no reason to anticipate or admit any difference of the ratios by which food and population increase. But since the production of food is a voluntary act of man, it is plain that nothing fixed and uniform can be predicated of it; and the quantity which he will produce will depend on his various ability or disposition. It will be affected by the abundance or scarcity of land, by the security of property, by the manners prevailing in the country, by the stage of civilization of the people in question. In general, it may be assumed that no more food, as such, will be produced than is needed to support the population. Much more grain indeed may, and in many countries is grown, than is consumed; but the surplus being exported may be regarded, in this connexion, as any other manufacture. After the demands of foreign commerce are supplied,

no more food will be produced than is needed for consumption. Generally we may go further, and say that not so much is produced as is wanted for the whole population, and we imagine it is this point which has led Mr Malthus into the idea of his twofold ratio. In a cultivated society, where a great division of labor exists, a small part of the community fulfils the office of preparing food for the whole, and the greater portion of the inhabitants procure it by exchanging something for it, labor or other equivalents. Now the poor, from unthriftiness, indolence, and vice, will often incapacitate themselves from procuring their share by this exchange; and the rich will, by waste and by possessing the means of purchasing for luxury, consume more than their share; and thus the supply will prove inadequate to the wants of all the eaters. Hence the population may always exceed the actual level of the food, more or less in different countries, but in some degree in all;—not because population and food advance in different ratios, but because those who stand at the bottom of the scale will suffer, when by any accident, or by the general causes at which we have hinted, an equal distribution is not effected. The remarks of Mr Everett on this general point are so satisfactory, that we should do our readers an injustice not to break off our own and transcribe his.

'The economical effect of an increase of population is an augmentation in the supply of labor and in the demand for its products. The wants of the new comers create the new demand, and their labor furnishes the new supply. These principles are too obvious to require any development; yet Mr Malthus seems either not to have perceived them, or not to have kept them distinctly in view. He appears throughout his work to consider the increase of population simply in its effect upon the consumption of the means of subsistence, without regarding its operation upon their supply. He views every individual added to society as an additional consumer, without appearing to reflect that he is also at the same time an additional laborer. This consideration alone, if properly estimated, is sufficient, I think, to rectify the whole theory of this writer, and to refute its paradoxical and dangerous parts.

'The circumstances that determine the productiveness of labor are necessarily two, the natural advantages under which it is applied, and the skill employed in its application. The same quantity of labor will produce a hundred bushels of corn in Mexico, and only ten in Norway; nor could any effort of industry obtain

the delicious wines of France and Italy from the soil of Great Britain. The effect of a difference in skill is equally remarkable. A single miller will grind more corn in a day than twenty men would be able to pound up into powder by hand; and a single weaver will weave more cloth in an equal time, than a dozen persons who labor without a machine. These illustrations obviously afford a very moderate representation of the differences in the productiveness of labor resulting from the varieties of natural advantages, and of skill under which it is directed. For the present purpose the advantages of nature as well as the labor of individuals may be considered as uniform; since the increase of population can have no immediate effect in altering the soil, climate, or other natural properties of the country in which it occurs. Of the several causes that determine the amount of the means of subsistence which will be obtained by the labor of a given number of individuals, the only one therefore which must be regarded as variable for the purposes of this inquiry, is the skill with which their labor is applied. Hence the question whether an increase of population tends to produce an abundance or a scarcity of the means of subsistence, resolves itself into the further one, whether such increase produces a favorable or an unfavorable effect upon the skill employed in the application of labor.

'The question being thus reduced to its proper terms, few intelligent persons, I apprehend, will hesitate much, about the manner in which it should be answered. It is sufficiently notorious that an increase of population on a given territory is followed immediately by a division of labor; which produces in its turn the invention of new machines, an improvement of methods in all the departments of industry, and a rapid progress in the various branches of art and science. The increase effected by these improvements in the productiveness of labor is obviously much greater in proportion, than the increase of the population to which it is owing. The population of Great Britain, for example, doubled itself in the course of the last century, while the improvements in the modes of applying labor made during the same period have increased its productiveness so much, that it would probably be a moderate estimate to consider its products as a thousand times greater than before. If however we suppose the increase in the products of labor naturally resulting from the doubling of the population on a given territory, to be only in the proportion of ten to one, the means of subsistence will still be more abundant in the proportion of five to one than they were before. And on this very low calculation, the respective rates of increase in the amount of population and the means of subsistence comparatively stated, will be as follows:

to wit, for the population 1, 2, 4, 8, 16, &c. and for the means of subsistence 1, 10, 100, 1000, &c. This statement of ratios is more comfortable and, I believe, far more correct than that of Mr Malthus. But this estimate, though moderate, is still much higher than it need be in order to refute the system of this writer. It is only necessary for this purpose to suppose that the increase in the products of labor exactly keeps pace with the increase in population: as, for example, that the additional supply of laborers together with the improvement of methods and invention of machines, resulting from the doubling of a population on a given territory, only maintains the productiveness of labor at the same point at which it stood before, and consequently doubles its products. Even upon this estimate, however much below the truth, the supply of the means of subsistence remains the same, notwithstanding the increase of consumers. In order to substantiate the theories of Mr Malthus, it is necessary to adopt the strange supposition, that labor becomes less efficient and productive in proportion to the degree of skill with which it is applied; that a man can raise more weight by hand, than by the help of a lever, and see further with the naked eye, than with the best telescope. pp. 12—15.

It will be perceived that these views leave ample room to account for all the suffering for want of food which there is in the world; or rather they furnish the only sound explanation of this distress, by referring it to the neglect, misfortunes, or vices of the sufferers. It is also to be borne in mind, that although the production of food, as the act of man, must advance with every thing which increases the amount of human agency in the world, yet the individual being is brought into existence by the interposition of others, and is unable for some years to prepare his own food. We accordingly find that it is in infancy that the greatest mortality happens, that age suffering which is not only most tender, but which is also wholly dependent on others for the supply of food. This demands to be taken into consideration, in stating the general proposition, that food is the production of man, since there is nevertheless one period of man's life, in which he is incompetent to produce it. It is true this is counterbalanced by the strong affection, which leads parents to provide for their children's nourishment. But since some children come into the world under circumstances which deprive them of parental support, it is reasonable to expect some inequality in the amount of that food which all need, and of that population of which a part only (though infin-

itely the greater part) is able to prepare or acquire food. This deduction however cannot amount to any difference in the ratios of increase. And as human labor and skill are the great element in the increase of food, it is, upon the whole, plain, that food must increase with the numbers of those who need it, and who are able to raise it.

Hence in point of fact they are both advancing in the same ratio in all countries, where either of them is advancing. Where food is on the decline, population must decline also. Where population advances permanently, by however slow an increase, there food must advance by the same ratio; unless we suppose that the people are every day more and more wretchedly fed, which is an absurdity on the supposition of a permanently increasing population. Where the population is stationary, food, for the same reason, will also be stationary. And since every population must be either advancing, declining, or stationary, and food in all these states must keep even pace with it, we cannot perceive how the idea of different ratios between them can stand for a moment.

The difficulty which most needs solution in this controversy is that, which arises from the inquiry into the ultimate consequences of an indefinite increase of population on the earth, while the supply of food must be limited. Mr Malthus has urged that the effect of such an increase would be a fatal overstocking of the earth and consequent famine, distress, struggle for the food which would not be adequate for the wants of all, and thus a general disorganization of society. This effect is by Mr Godwin merely put at an indefinite distance. By the Marquis Condorcet, even in the midst of splendid visions of human perfectibility, such an event is considered unavoidable, and he speaks of the periodical destruction and renovation of our race as a part of its natural economy. Of all these ways of considering the subject, we must confess that Godwin's, though mixed with strange errors, is nearest the truth. Godwin places the evil itself at an indefinite distance. Had he placed it at an infinite distance, that is, had he said it could never occur in the constitution of our race, we think he would have spoken the truth. Godwin also urged that vicious political institutions obstruct the progress of man towards an indefinite improvement of his condition. This, in general, is also true. The error of Godwin was in the specification of his instances. Led away by the passion of the

times, he numbered among the abuses which thus obstruct the improvement of man all political and social institutions. To this Mr Malthus replies, that it is not political institutions, which prevent the indefinite increase of man, but the constitutional law of our nature, which makes population increase so much faster than food, that the former is always kept down by the latter, and that this pressure, so far from being delayed till the earth shall be cultivated to its last inch, is felt every day and hour. From these premises Mr Malthus would infer, that reform is not to be attempted in vicious political institutions, since not they, but the primitive laws of our nature, produce the pressure on the population.

Now to this mode of meeting Godwin's visions of reform every philosophical inquirer must object. It would have been far more judicious to examine particularly the alleged abuses in society, to which Mr Godwin traces its sufferings, and to show them either to be no abuses, or abuses inseparable from our nature. Thus Mr Godwin particularly insists that marriage, and the English laws of property, are pernicious abuses. How easy would it have been for Mr Malthus to meet him at large on the first point. Instead of this, he has only alluded to the subject in a few paragraphs. As to the English laws of transmitting property, Godwin is unquestionably justified in calling them an abuse. Till the vast accumulation of personal wealth rendered their provisions in some degree nugatory, it was an abuse of the most active and operative kind, and to no one cause is the modern growth of England more to be ascribed than to the equal distribution of personal goods. In this instance therefore Godwin justly attributed a part of the suffering of the common people to the odious laws which take so great a proportion of the land of England out of the market; and Mr Malthus, instead of setting up against him the fantastical defence of his different ratios and alleging that they would sooner or later produce the same evils, should either have shown that these laws are not, or have confessed that they were, productive of evil.

It is the more to be wondered at that Mr Malthus did not avowedly take this course with Mr Godwin, since he has unconsciously fallen into it, in nearly one half of his work. All that part which treats of the checks of population in different countries, is in reality an amplification of Godwin's idea that

the increase of man is kept down by false political institutions. From the savages of New Zealand up to the civilized nations of Europe, there is not one country, in which Mr Malthus might not find a part of the checks on population in human institutions. It is with a somewhat perverse ingenuity, however, that he identifies their operation with that of his great mathematical check; and tells us that, though moral restraint, vice, and misery are the immediate checks, they all grow out of the tendency of population to outrun food; and that however bad the government is, the population is always somewhat greater than the actual means of subsistence. But to infer from this, that *therefore* it is in vain to reform institutions because, however scanty the population, it is still beyond the food; and that it is in vain to multiply the food, because, however abundant, the population will still outrun it, besides being inconclusive, is, in our judgment, a very dangerous argument. It is inconclusive, for it may be (nay it certainly will be) that the reform of vicious institutions will at one and the same moment give a spring both to population and to food, and not only more people will be fed, but they will be better fed; and whereas in a savage or despotic country all are pinched, in a free and prosperous country a few only starve, and the majority are at ease. But Mr Malthus' reasoning is not only inconclusive, but it is of the nature of an estoppel, against all reforms, all improvements. He urges with the most solemn and eloquent earnestness, that our nature is so constituted that population must outrun food, and that the more perfect the theoretical constitution of society, the more rapidly and more certainly it tends to a disproportion between population and food. Now by what argument—on these principles—can the most atrocious despotism, the most hideous tyranny, whether of mobs or monarchs, be reformed? What is to hinder the monarchs or the mobs from saying, 'Not our sway, but your own nature, dooms you to famine. Till the soil to the last rood; you will multiply faster than your means of support; starve you must, whether we rule or abdicate.' To such a defence of despotism, we see not how Mr Malthus could reply. An inference so dangerous to human happiness must lead us to question the hypothesis on which it rests, viz. that man, by a law of his nature, tends thus fatally to overstock the earth. We deny any such tendency, and are happy in having Mr Malthus, though ostensibly an

opponent, yet really a patron of our opinion. Mr Malthus maintains that this overstocking is prevented by another necessary law of our nature, namely, the difference of the two ratios. How then can man be said to tend naturally to a catastrophe, to which he is prevented from arriving by the organic laws of his nature? We differ only as to the law which prevents this increase; and we seek it in the intention in which man was formed, by Providence. The earth on which we are placed is limited; our race tends not to infinite but to indefinite increase. It is plain, then, that the Being, who created us, either designed expressly that we should multiply and literally fill the earth, in order then to starve by myriads, or that he has so constituted us, that the principle of increase, though indefinitely advancing, will never overstock the earth, though limited in its extent. If we are still asked what these causes are, we answer, all those circumstances, in our constitution and fortunes here on earth, which check increase; some of them arising immediately from the virtues and some from the vices of man, some resting on the dictates of prudence, some on the law of necessity, some growing out of the constitution of our frames, some from the organization of society, some resulting from the great catastrophes in the physical world, and some purely of a moral quality. Man is prevented from overstocking the earth, in the same way that he is prevented from living, in the individual case, to be a thousand years old. We believe it would be very difficult to give a more distinct reason for one than for the other. Three score years and ten are considered a kind of term to human existence, but well authenticated instances exist of persons who have attained to more than twice that period in modern times, and no particular reason can be given why man should not live five hundred or a thousand years, nay, as Condorcet thought he might, forever. This would, of course, tend to the overstocking of the earth much sooner than that event could take place, in the common order of mortality. Yet Mr Malthus cannot ascribe it to the difference of his ratios of food and population, that no man lives to be five hundred or a thousand years old; and his theory, potent as its principle is, gives no account why those, who have food in abundance and the means of increasing it as they wish, do not live on from age to age, and never die. We hold it therefore far more simple, far more philosophical,

to account for the earth's not being overstocked, first as a law of our nature that it should not be, and then by the whole complex action of the principles, by which what we are, in every other respect, is also determined. That generations pass away and others come on; and that the successive races thus make room for each other, instead of accumulating into a crowd beyond the power of the earth to feed, we hold to be brought about in the same way, that the death of each individual man is brought about.

But Mr Malthus may say that this view of the subject involves the inconsistency of supposing that so great a calamity as the overstocking of the earth is prevented from occurring by various vices and imperfections of our nature, against which, nevertheless, we seek for remedies as evils in the individual instance; thus striving to remove those vices and imperfections, whose combined agency discharges so salutary a function in the human system. This observation, if correct, would form no objection to our view of the subject; or if it did, the objection would apply still more pointedly to the theory of Mr Malthus himself. The overstocking of the world, or any part of it, would be an evil, and this evil, say we, is prevented from occurring by various restraints, imperfections, and evils in our nature, against which—though collectively their operation is salutary—we all struggle and seek for remedies. Mr Malthus, on this point, differs from us only in saying that the acknowledged calamity of an overstocked world is prevented from occurring by the actual starvation, which constantly presses upon population, and presses with increasing force as population increases. And yet starvation surely is an evil—though discharging this salutary office—against which all men must struggle; a bitter cup necessary to be swallowed, but which each would fain have pass from himself.

Mr Malthus repeatedly observes that the simplicity and neatness of the proposition, whereby he accounts for the fact that population is kept within bounds, from a presumption of its truth. There are cases indeed when we all feel the truth of Boerhaave's motto *simplex sigillum veritatis*, but it is not often that great questions in human condition and destination are to be so easily disposed of. 'It is a perfectly just observation of Mr Godwin,' says Mr Malthus, 'that "there is a principle in human society, by which population is perpetually kept down to the

level of the means of subsistence." The sole question is, what is this principle? Is it some obscure and occult cause? Is it some mysterious interference of heaven, which at a certain period strikes the men with impotence and the women with barrenness? Or is it a cause open to our researches, within our view; a cause which has constantly been observed to operate though with varied force, in every state, in which man has been placed? Is it not misery and the fear of misery, the necessary and inevitable results of the laws of nature, which human institutions, so far from aggravating have tended considerably to mitigate, though they can never remove?"* We confess ourselves neither convinced by this reasoning nor gratified by the result. No one denies that the state in which human population is found 'is the result of the laws of our nature.' But the question is whether a difference of the ratios, in which food and population increase, is one of those laws? Misery and the fear of misery are certainly *among* the checks of population; but that, in general, human institutions, so far from aggravating, have tended to mitigate this misery, is a language, which we hear with astonishment from a profound philosopher. We had supposed that whether 'institutions' relieve or aggravate misery, depends on the nature of the institutions. The institutions of representative government, of free schools, of saving banks, and of religious instruction, we believe have a great tendency to mitigate human misery. We consider the institution of the holy inquisition, of despotic government, and of the law of primogeniture, as equally calculated to promote human misery; and for one being, who has suffered in a free, well governed state, from the arithmetical ratio of increase in food, we believe thousands have laid down their lives on the dark altars of political and religious oppression.

Moreover where men die for want of food, it is very rarely because it was in itself deficient. How can it be pretended that there is any lack of food in Egypt, for instance, one of the granaries of Rome, and now one of the countries in the world the poorest fed? There is no real deficiency of food where there is a rood of ground and a human arm to till it; and the government, or the laws, which prevent all who are willing to acquire food from doing so, are guilty of plunder as directly, as if they burst the granary of the rich merchant and

* Essay on Population, Vol. II, p. 110.

rified it of its contents. There is no deficiency of food in the most crowded country on earth, whether it contain or do not contain land enough for the subsistence of its population. Were the restrictions on commerce done away, for example, in England, the flour of the Genesee country would obstruct the wharfs at Liverpool, and that of the Crimea would enter into competition with it there. It is true this would reduce the rents of the landholders. They would lose the profits they now make from inferior soils, out of the hunger of their countrymen, and a great transfer of capital to other branches of industry and to other countries would take place. With it would take place a transfer of the arts of civilized life to the fertile but barbarous quarters of the earth; and instead of an act of parliament imposing a heavy fine on a weaver who, unwilling to starve at home, is desirous of emigrating, governments might find it for their interest, and subjects for their happiness, to have a free right of emigration established.

But here again Mr Malthus' importunate argument emigrates with them. By virtue of the difference of his two ratios, want would spring out of the bosom of this wide-spread plenty, and though the freedom of commerce should afford an indefinite supply of food, it would lead only to the still more rapid multiplication of starving millions. In addition to what we have already urged in reply to this argument, and to show that by the constitution of our nature, the race of man is restrained from this disastrous increase, we may appeal to what is every day observed in society, as to the effect of plenty to produce an extraordinary increase of population. If it were true, as is very many times asserted by Mr Malthus, that great plenty leads to still greater increase and consequent suffering for food in the midst of this plenty, in what way is the difference to be accounted for between the higher and lower classes of society in respect to their relative tendency to increase? In most of the countries of Europe, two classes exist in the community, one possessed of great wealth, the other poor. Whence is it that among the first, who know not what want means but by the spectacle of it exhibited in the class beneath them, who have enough and to spare while famine pinches the land, whose board is amply spread while consuming drought parches the cornfield of the cottager, whence is it that, in this favored class, population is notoriously so much less active than in that class, on

which hard seasons deal their severity, which depends on the chance of the elements for its sustenance, and which starves if the crop fail? Whence is it that children are, in this country, the poor man's blessing, in Europe the poor man's curse; in all countries found to be fewer, almost in proportion to the abundance of the means of their support? We apprehend that this unquestioned fact is to be explained, by what Mr Malthus will perhaps reject as 'a mysterious and occult cause;' certainly on the operation of principles which he has not drawn into his account. The truth is that man is not, like the beasts that perish, a mere animal, to propagate upon food like the flocks and herds. It is only when sunk by the vicious institutions of society to the situation of a mere animal, that he puts on the conditions of brutal nature, and that his increase is measured by the corn that is dealt out to him. In proportion as his intellectual and moral nature—his only true nature—is cultivated and called out; he becomes, we will not say something different from an animal, but he certainly becomes something besides an animal. He awakens to an existence, which corn does not feed, and which famine does not starve. A moral and spiritual life grows up within him with its own principles of growth, of nourishment, and decline. In proportion to this growth of another life, to the delicacy, to the elevation, to the purity of the new existence, which the son of heaven has put on, will be the influence of the remaining mere animal nature, and the degree to which it will govern and determine his progress. Where this intellectual and moral being exists in all its abstraction and purity, it weakens the application of the passions of a grosser nature. The difficult spirit, in quest of a companion of kindred qualities, dwelling perhaps in visionary meditation on the images created by fancy, passes through life without having found a congenial character. A thousand delicate regards to all that affects human duty and happiness in that widely extended sphere, in which such a mind beholds them, operate on the conduct. Steele, without any attempt at generalizing, describes such a character in his Fidelia, a young woman of beauty and wealth, who rejects the addresses of numerous lovers and finds her happiness in attendance on an infirm father. Though it is most pleasant to contemplate this intellectual existence in its pure and amiable forms, yet as far as the present subject is concerned it is not

less important and perhaps more frequent, when its moral character is of a different kind. The vast and complicated business of polished society constitutes a distinct sphere of cares, desires, and pursuits, for a considerable part of the higher ranks in the old world, and for those who most resemble those ranks among us. The earnestness with which the great objects of life are pursued; the agonizing tension of the soul under the influence of ambition, of emulation, of jealousy; the efforts of the mind required of them, on whose shoulders the weight of empire rests; the eagerness of gain, the absorption, the distraction of the great interests, to which men are pledged, all these and many things included in them, which we leave to the imagination of our readers to supply, strongly modify the existence of man; and furnish a part of the laws that regulate the multiplication of the race. Mr Malthus has glanced at some of them, under the head of the preventive check arising from moral restraint. But a volume would not suffice to do justice to the practical importance of the theme; and to trace the manner by which the advancement and the cultivation of the life of the reason, of the affections, and of the passions, are made to counterbalance the tendencies of the animal nature. The history of man and contemporary observation would sufficiently establish the soundness of this speculation. They would point to us the extinction of noble and royal families, the magnificent desolation of uninhabited castles, the barren bed of vicious opulence. They would change the scene and show us the action of the same principle under the different form of a mistaken piety, filling the desarts and the provinces with convents and monasteries, where 'the mind received a kind of melancholy culture, and the heart enjoyed an enthusiastic exercise of some of its strongest affections.'* While finally in private and individual life, we may often trace the unpartnered solitude of the heart among the victims of many of the strong passions, tender scruples, exquisite tastes; and which whether they excite our aversion as gloomy and unsocial, or command our admiration as lofty and purified from the dross of the world, or move our pity at the dreary void of the social affections which they induce, all operate practically to bring into exercise a different law of progress in the increase of man.

* Buckminster's Female Asylum Sermon.

These reflections will perhaps lead us to adopt with caution the idea that vice and misery alone are the checks on the indefinite increase of our race. We do not know on the other hand by what argument it can be made out, that such an indefinite increase is any part of human perfection. No one, whose assent we are anxious to secure, will deny that the moral and intellectual nature of man is his great glory; nor doubt that in the cultivation and improvement of this moral and intellectual nature, the original design of our being is to be placed. It is equally true that the multiplication of our species is the result of one specific instinct;—native, virtuous, powerful;—but shown by daily observation to be only a part of our natures. There are other principles within us equally native, equally virtuous, in their end more elevated, and so far from being of rare occurrence, that no one can look round upon society about him without witnessing their action and its superiority to the mere law of animal increase.

But we must hasten to draw these remarks to a close, by offering our readers a brief analysis of Mr Everett's work. Having in the first chapter stated the origin of the controversy between Messrs Godwin and Malthus and their respective doctrines as to the effect of political institutions, our author devotes his second chapter to the real effect of the increase of population. From this chapter, we have already made an extract in which the doctrine, we think, is amply established, that the increase of population produces a great increase in the means of subsistence. This is the new view, which Mr Everett has labored to establish, and which forms the basis of the work. It is farther illustrated in the third chapter, by applying it to man in different stages of civilization. One point is so ingeniously and ably urged, that we cannot forbear an extract of the passage.

'The amount of labor at the disposal of the society and the skill with which it is applied being thus augmented, in proportion to the increase of population, it is evident that the result must be a great increase of products. The greater or less degree of abundance, as respects the means of subsistence which will result from this increase, will depend upon the physical and political situation of the society, and the greater or less degree in which the several departments of industry are favored by it. It seems to be the opinion of Mr Malthus that as long as there are large tracts of land in a country to be occupied, the increase of popu-

lation is unattended with danger; and that it is only when the soil has been entirely appropriated, while the population still continues to increase, that the danger of scarcity begins to present itself. But in this, as in many other points, the positions of Mr Malthus seem to be directly the reverse of the truth. As long as the principal effect of the increase of population, is to bring under cultivation additional tracts of land, the positive resources and wealth of the society will doubtless be augmented in the same proportion, but the means of subsistence will be neither more nor less abundant than they were before. Let us suppose, for example, that a hundred families obtain an easy and abundant subsistence by cultivating five hundred acres of land. If the number of families be increased to two hundred, and the number of acres under cultivation to a thousand; it is obvious, that the proportion between the demand for the means of subsistence and their supply will not be altered. It is only when the population begins to increase on a territory already appropriated, that it produces the effect of augmenting the supply of provisions in proportion to the demand. In the former case, the supply of labor is augmented, but the skill with which it is applied remains nearly the same as before. In the latter, the skill as well as the number of the laborers is increased; and as the productiveness of labor depends almost wholly upon the skill and science with which it is applied, it is obvious that the products will be infinitely more abundant in the latter case, with the same increase of population, than they were in the former. The increase of population on an unoccupied territory only increases the quantity of rude labor and of its products, but leaves the productiveness of labor and the comparative abundance of its products as before. On a limited territory the same cause introduces the new element of skill, the effects of which, in augmenting the productiveness of labor and the abundance of its products, are unbounded and incalculable.' p. 24—25.

Having thus established the real effect of an increase of population, Mr Everett proceeds to refute the doctrine of Mr Malthus, that there is actually existing throughout the world a permanent scarcity of food, arising from the pressure of population on subsistence, and this he has aimed to do in his third, fourth, and fifth chapters. In these it is shown that Mr Malthus' argument takes for granted that a given population must subsist upon the direct product of the soil they occupy; and secondly, that the rate of increase of the human species, assumed by Mr Malthus as true, being deduced from the single example of the United States, and not from an average of all

the known cases, involves a logical error, and in point of fact is a great deal too high.

The proposition that the increase of population is a principle of abundance and not of scarcity being thus established in a positive way, and cleared of the only objection that can be made to it, it formed no necessary part of Mr Everett's object to ascertain what the rate of increase of the human species really is, and what the causes are that determine the extent of population. But as these are interesting questions, and have generally been discussed in connexion with the main subject, Mr Everett has briefly considered them in the sixth and seventh chapters of his work, where he has shown that the extent of population is determined almost wholly by the degree of civilization; and that its increase is checked at every stage of civilization, by particular forms of moral and physical evil, the operation of which may be indefinitely diminished, but can never be wholly removed, and will always prevent the earth from being overstocked with inhabitants.

This theory is illustrated, in the eighth chapter, by a reference to the example of the United States of America. The unprecedented increase of population, in this country, is attributed by Mr Everett to its extraordinary political and geographical situation, by means of which the inhabitants have been almost wholly exempt from the influence of the checks on population, that have generally existed in communities, at the same point of civilization. In other words, it is attributed to the goodness of the social institutions and the good morals of the people. The abundance of the means of subsistence enjoyed by men is stated to be the consequence and not the cause of their favorable moral and political situation, and this point is illustrated by a reference to the case of the neighboring Indians, whose position is precisely the same in every particular excepting that of civilization, and who, instead of increasing in population and living in abundance, are diminishing in numbers and dying of want.

In the ninth and tenth chapters, Mr Everett has examined the doctrine of Mr Malthus on the propriety of discouraging marriage and abolishing the poor laws, and having already shown the error of the principles from which these inferences were drawn, there is little difficulty of course in reasoning against the inferences themselves. In fact, it is that part of

Mr Malthus' work, wh re he recommends the abolition of all laws for the systematic relief of the poor, which will soonest awaken scepticism as to the soundness of the system, of which this harsh proposal is a part. It is capable of moral demonstration that poverty is a part, and an important part, of the plan of Providence; that it is a duty to relieve it:—and it is the dictate of reason and common sense that what it is a duty to do at all, it is a duty to do in the most efficient way. To say, with Mr Malthus, that all relief of the poor should be left to casual charity, is to say that this relief ought to be bestowed in the least effectual, the least intelligent, the most wasteful manner. Nor ought any argument against poor laws to be drawn from the monstrous abuses of the English system.

In the eleventh chapter of his work Mr Everett has explained the manner in which the state of civilization affects the rate of wages, and prevents in many cases the rewards of individual labor from increasing in proportion to the increased productiveness of the labor of the community.

Mr Everett has justly remarked of his work, of which we have thus given a faint outline, that it is itself little more than a summary of the principal heads of argument, in a very condensed form. Though it should appear that his leading view, viz. that the increase of population is a principle not of scarcity but of abundance, is not absolutely new, it is plainly original with its author, and is developed with greater precision, we imagine, than it has ever before been. The writer of this notice abstains from bestowing any compliments on the work, which would come from too partial a source to be of weight. But he trusts he shall not overstep the limits of propriety, in recommending the essay of Mr Everett as a happy specimen of original and profound thinking, clothed in chaste and simple language. Whether it will produce an extensive effect on the public mind, with regard to the great question which it treats, must be left for time to decide.

Art. XV.—*Beobachtungen auf einer Reise nach England, &c.*

Observations on a Journey to England, with Recollections of memorable Occurrences and Contemporaries, during the last

fifty years. By Augustus Herman Niemeyer, D. D. 2 vols. 8vo, 2d edition. Halle, 1822.

No nation in Europe is better calculated than the German to furnish travellers in England. The French are too much embittered by the 'natural hostility' existing between the countries, to be impartial on the subject of the British character and institutions. The Germans, if erring on either side, are too prone to view every thing in England; with admiring eyes. This disposition is, however, in some degree corrected by the offence which the Germans naturally take at the disdainful manner in which their national character, language, and literature are treated in England. In self-defence, a considerable freedom of censure is therefore exercised by German travellers in England; while the better qualities of industry, curiosity, and not seldom a knowledge of the language, are oftener found among them, than among their mercurial neighbors on the continent. Some excellent books of travels in England have accordingly appeared in German, of which the best, that of Professor Gœde of Göttingen, in an English translation by Mr Horne, has been reprinted in this country, and was noticed in our number for July, 1822. Excepting the work of Mr Simond, that of Gœde is the best book of travels in England with which we are acquainted.

The work before us is from the pen of Dr Niemeyer, chancellor of the University of Halle, a seat of learning, which, to say nothing of living scholars, is renowned among theologians at least, for the name of Semler. Dr Niemeyer has long filled, with great distinction, the honorable place of chancellor of the University, of which he is also a professor in the theological faculty. He is likewise at the head of a high school in Halle, which forms a part of a series of charitable foundations, that owe their origin to the liberality of Franke and Canstein, and exceed in importance the private benefactions for literary and charitable purposes, in any other part of Germany. Among these establishments, the Canstein press for printing bibles is justly worthy of note, and has been called the pattern of the British and Foreign Bible Society. Twelve presses are constantly employed in this establishment, in multiplying copies of the scriptures, not indeed for gratuitous distribution, but for sale at a low price; and from these presses, within a century, over two hundred editions of the bible have appeared.

To his standing as chancellor of the University of Halle, Dr Niemeyer adds that of one of the most esteemed of the living writers in Germany. His *Scripture Characters* and his various works on the theory and practice of education have passed through many editions, and are particularly acceptable to that moderate party in Germany, who though not inheriting the strictness of times gone by, are still farther from adopting the bold speculations of the last half century. The personal character of Dr Niemeyer contributed not a little to uphold the University of Halle, in the disastrous period of the French domination. Twice, the decree of its suppression was pronounced by the Westphalian government, whose patronage of letters was almost confined to the more fortunate University of Göttingen. Dr Niemyer, however, has had the happiness to see the University, where he received his own education, and to which he has devoted the labors of his life, survive these shocks; and possess at the present day a reputation among the most respectable of the German seminaries.

His journey to England appears to have been rather an excursion of relaxation, pleasure, and philosophical curiosity, than a professed traveller's expedition. It began about the end of May, and at the beginning of August we find him on his return, at the mouth of the Elbe, leaving, after a deduction of the time consumed on the way, but about two months for his visit in England. We mention not this as at all detracting from the value of the work before us, in which the observations made by him are recorded, but simply to intimate the extent of his opportunities. So far from condemning journies of so short a duration, we could wish that they were oftener undertaken, even from our shores and with the discouragement of an ocean to be crossed. The idea that all Europe must be visited, and two or three years passed abroad, terrifies many, whose leisure and means do not extend to so formidable a length. Whereas a season is enough to answer some of the most desirable purposes of a voyage to Europe; and the improvements in navigation are now so great, that with rational views of the length of time requisite to be abroad, many more of our young men might command this advantage than at present, without the danger to which they are exposed of being weaned from their national tastes and habits, by a protracted residence in foreign dissipated capitals.

As Dr Niemeyer's time in England was limited, his observations are chiefly confined to London, Cambridge, Oxford, and Windsor, and to topics, for the most part, in which he felt something of a professional interest, such as those relating to education, charitable establishments, and religion. In point of variety, therefore, his work is not designed to enter into competition with that of Professor Gœde, nor would it prove so generally interesting to readers, who open a book of travels for matter-of-fact information as to the countries of which it treats. Neither does Dr Niemeyer profess, like Mr Simond, whom he quotes with great respect, to enter much into economical and statistical details. Scarce any thing in this way is attempted from original sources. The matter of the work, with the exception of a moderate portion of traveller's anecdote and adventure, consists of his observations on what he had occasion to see and hear in England. What we have already stated of his character and standing will prepare our readers to place a good deal of reliance on his remarks upon a large class of very interesting topics; nor will they find themselves on the whole disappointed. If we take any exception, it is to the extreme of candor, with which Dr Niemeyer is disposed to look on the bright side of English institutions. Though in many things he censures with freedom, yet in others he strains a point, as it seems to us, to defend what ought not to be defended. When we find him, with nearly equal zeal, arguing against the trial by jury, and in favor of the mode of education pursued at the public schools and universities in England, we cannot but regret that so respectable an authority should have placed himself so much and so unexpectedly in the wrong. In general, however, Dr Niemeyer's remarks are judicious and impartial, and his work, which with unusual rapidity has passed through two editions, is equally honorable to his feelings and to his understanding. As it is wholly out of the question to analyze a book of travels, we shall attempt nothing more, in the remainder of this article, than an extract of some part of the amusing and instructive matter which it contains.

One of the most incomprehensible things to every traveller is the private life and manners of a nation. Many things in which the peculiarities of the English are most marked, having descended by inheritance to us, strike us in no degree as

strange. It is often not a little amusing to see what portentous oddities alarm the foreigner of some other nation, in what pass with us for the most common incidents of life. We shall abridge from Dr Niemeyer's work, as an illustration of this remark, an account of an English dinner party, which he has himself extracted from a book on England, written by a lady of some note in Germany, Madame Schopenhauer, who is mentioned, if we remember, by Madame de Staël. Our readers will be inclined to think, from one or two points in the description, that Madame Schopenhauer's dining acquaintance did not all live in St James' Square.

'The table,' says this lady, as quoted by Dr Niemeyer, 'appears to you as you enter the dining-room all served, *but for the most part without napkins.* The table-cloth hangs to the ground, and every one in sitting takes it upon his knee, and uses it, as we do our napkins. The lady of the house sits in an *armed chair*, at the head of the table, and her husband opposite to her, at the other end. The guests take their places in common chairs on either side, and intermingled with each other, as their places are prescribed to them by the host. All the dishes, which belong to the first course, stand upon the table under block-tin covers. The lady helps to the soup,—somewhat thin, but well seasoned with Cayenne—asking every individual guest if he choose any. Soup with the English is a rarity. A friend or two next assist the lady and gentleman of the house in helping to the other dishes. All the dishes are helped to immediately after the soup, and not in a regular order, one dish at a time, as in Germany. They consist, generally, of fish, such as salmon, cod, turbot, and the like, which would be better for salt in the cooking; of puddings, vegetables, tarts, and all sorts of flesh and poultry, without salt, butter, or other addition; cooked with steam, broiled, roasted, or boiled. Pepper only is bestowed in abundance. When a thin, dry crust is laid on such a dish, it is dignified with the name of a pasty. The half-raw vegetables must look green and fresh, and it is not till they appear on the table, that melted butter is put to them, and then by each one according to his taste. Potatoes fail at no dinner; they are excellent, but cooked in steam alone. The puddings of all kinds would be very good, but that they are too fat, often made of little else than beef marrow. The pies, the triumph of English cookery, consist of half-ripe fruit, boiled in water, and provided with a cover of dry paste. The pickles, which accompany the roasted dishes, consisting of vegetables of all kinds, such as maize, unripe walnuts, small onions, and so forth, preserved with strong

vinegar and much spice, are excellent. In these, as also in soy and other rich sauces, which are manufactured by wholesale, a great trade is carried on from London to all parts of the world. The sauces, mustard, oil, and vinegar, stand in ornamental frames for the use of the guests; also for every two persons is placed a saltcellar. The salad is dressed and cut small, by the lady of the house at table, with great ceremony; it consists of a very tender, succulent lettuce, whose leaves are narrow, but half a yard long. I have never seen it out of England; and in return the English are wholly unacquainted with our head lettuce!

'At an English table there is no end of questions on the side of the host, and answers on that of the guest; a great embarrassment for a foreigner, who though otherwise well enough acquainted with English, is still wholly unable to comprehend all these technical expressions. He must state particularly of every dish whether he will have any—much or little—with sauce or without—what part of the fowl or fish—well done or rare.' 'This account,' interrupts Dr Niemeyer, 'is not exaggerated. While eating, nothing but eating is spoken of, a circumstance which tasks a foreigner not a little. The technical terms must first be learned; and yet, with very little choosing, I have generally surrendered at discretion; little to the content of host and hostess, who are really concerned that you should have what you like best.' 'The ceremony of drinking, says Madame Schopenhauer, is every where the same. The host commonly begins and "demands permission of a lady to drink a glass of wine with her," and at the same time desires her to say whether she will have red port or white sherry. These two wines are always on the table and every where in two decanters exactly matched, often of the finest cut glass, with two glasses for each guest of somewhat different heights. Courteously bowing toward each, the lady and gentleman say, as in chorus, "Sir, your good health," "Madam, your good health," drink out their glasses, and set them away. Presently the same challenge is heard from another voice, the same ceremony is repeated, and still repeated, till every gentleman has drunk with every lady, and every lady with every gentleman, at least once round! No one can decline; that were offensive. Besides this, at the first glass every one is bound, at least with a bow, to wish the health of every one at the table, and also to give particular note, if the same attention be paid him by any of the other guests. It would be improper for a lady to drink without being asked; which, however, she cannot long be uninvited to do. The gentlemen also, with every glass, invite some one to join them; to whom a third also may join himself, after duly asking permission. In this way, in replies to invitations to eat and drink, in drinking healths, and attending when your own is drunken,

one has enough to do.' Dr Niemeyer justly observes here, that 'though this may be the ancient order in many families, it is more or less departed from in others, and that health-drinking is in general going out of use as unfashionable.'

'The number of dishes,' continues Madame Schopenhauer, 'is seldom great. All moves briskly; and in an hour or more the dinner is over. The table is cleared, the crumbs of bread carefully swept up with a cloth, and different kinds of cheese, butter, radishes, and again salad are brought on. The latter is eaten with cheese, without any dressing but salt. This interlude lasts not long, and gives place to another; every guest receives a small, finely ground cup of water, for rinsing the teeth and washing the hands, together with a small napkin; and they are used just as one alone at home would use them. After this ceremony of purification, the whole decoration is changed. The table-cloth, with every thing upon it disappears, and the beautiful, polished mahogany table shines before you. Decanters and glasses are now placed before the master of the house, the fruit is set on, and every guest receives a small dessert plate, two glasses, and a small red checked or plain red cloth, folded square. This however is seldom unfolded, and is only used to place a glass on. The fruit is not handed round, but as before, in the other dishes, helped out and offered, with many questions. Now the decanters begin to play the chief part; each pushes them to his neighbor, after having helped himself to little or much as he will. The host now gives toasts, drinks to the health of his friends, and never forgets the royal family. Soon the lady of the house rises from her armed chair, and with a slight inclination gives the signal to the other ladies. All rise and follow their leader modestly out of the room. The gentlemen now feel more easy, all restraint is banished, and they are alone with their wine, politics, and cheerful conversation. * * *. Meantime the ladies amuse themselves as well as they can, by the fire in the other room, for an hour or more, till tea and coffee are prepared, when the gentlemen join their party and conversation grows more animated.'

We have quoted this account of an English dinner from a German lady of literary celebrity, to which Dr Niemeyer has given his sanction by adopting it into his work. It shows how easy it is by a little ignorance or inattention, and a little exaggeration, for a foreigner to make a strange story out of what seems to a native the simplest thing in the world. The wonderment of a native of the east would begin much sooner. Accustomed to leave his slippers at the door, he would be as-

tounded to see the carpet trod by the shoes and boots, which had just been traversing the streets. Used to wearing a turban, he would be shocked at the indelicate exposure of the naked head. Familiarized to sitting on the floor and eating with his fingers, he would be equally incumbered and perplexed at being put up into such a scaffold as a chair, and forced to perform, what he would consider the cook's or the butcher's office, that of carving and cutting the meat. As a further illustration of the difference of sentiment, as well as manners in different nations, we may add that common delicacy has forced us Americans to omit the reference, which Madame Schopenhauer makes, toward the end of her description of an English dinner, to a custom, which though practised by English gentlemen and reported by German ladies, cannot even be named among us.

The following list of the charitable establishments in London is found toward the close of Dr Niemeyer's first volume.

'1. Forty-three free schools in which four thousand children are either educated or supported, or both.

2. Seventeen schools for children wholly destitute and forsaken.

3. Two hundred and thirty-seven parish schools, which are supported by voluntary contributions, and in which from ten to twelve thousand children, boys and girls, are educated.

4. Twenty-two hospitals for sick, infirm, or lying-in patients.

5. Two large lunatic hospitals, Bedlam and St Luke's.

6. One hundred and seven poor-houses, for the support of indigent aged persons.

7. Eighteen establishments for the relief of specific classes of the unfortunate, poor, and helpless.

8. Twenty dispensaries from which medicine is gratuitously distributed to the poor. In all these establishments it is calculated that about £350,000 sterling, or near $4,000,000, annually are expended.'

These facts, which we believe are taken from Colquhoun, certainly exhibit an enormous patronage of poverty; and may justly enough be compared to the wages, by which any other part of the community lives. Whether it is exclusive of the poor-rates in London, we are not apprized, but we presume it is. The survey of these enormous contributions levied for the support of poverty, connected with the doctrine that the supply of pauperism as of every other article in the market will keep pace with the demand, has led the economists of Mr

Malthus' school, as has been hinted in the preceding article, to recommend the suspension of all legal provision for the poor. It is no part of our present intention, to engage in the discussion of this great and difficult question; but we would submit one or two doubts to the consideration of those benevolent persons, whose minds have been perplexed by the plausible arguments urged for so harsh a measure. Is it true that poverty is the effect of the sums of money appropriated for their relief? Is it not a natural and an essential consequence of the bodily and intellectual inequality of man, that in a large and flourishing community, there should be a gradation from the height of prosperity to the depths of misery? Do not old age, sickness, misfortune, infancy, widowhood—besides the vices which are as much a part of our imperfect natures as the virtues—lead to a great amount of poverty, by the inevitable constitution of human things? If so, is it not the duty of all the members of society, according to their ability, to contribute to the relief of that poverty, which necessarily results from the organization of society? If relief ought to be given, should it not be in the most regular, best concerted and efficient way? And do the evils resulting from ill devised and ill administered poor-laws furnish any other reason against judicious laws well executed, than the evils resulting from bad governments badly administered, do against good governments well administered? We apprehend that the true and obvious answers to all these questions would go far to furnish a refutation of the popular objections against systematic provision for the relief of the poor.

No subject is treated more at length by Dr Niemeyer than that of education, and the various establishments provided for it in England. His remarks on the Bell and Lancaster schools probably contain more novelty for the German than for the American reader. Dr Niemeyer expresses very decidedly the opinion, that the system of mutual instruction is adapted only to the merest elements of knowledge, and deprecates the attempt to introduce it into higher branches. But we confess we perceive no solid ground for this opinion. Besides a few mechanical and disciplinary arrangements, which are certainly as applicable to a high school as to a primary school, and for want of which most schools suffer, we suppose the great characteristics of the Lancaster method to be these two: the em-

ployment of monitors, whereby a multitude of pupils can be instructed by one master; and the constant keeping up of the attention, by the mode in which the exercises are conducted. Each of these methods may certainly be introduced into high schools. It has long been the practice in almost all schools, on occasion, to employ the more advanced pupils to teach the younger. We know of no reason why this may not be systematized and reduced to rule and generally applied, in one branch as well as another, or at least to the study of the languages, and uniformly as well as occasionally. The other principle, that of keeping up a constant attention, could be also applied in the study of the languages, in many respects, as in the humblest elements of arithmetic or spelling. Thus in construing, let the head boy in the class give the first word, *Cano, I sing;* the second boy the second, *arma, arms, war;* the third boy, *virumque, and the man*, &c.—In case of error, since the boys might not, as in arithmetic or spelling, be able to judge when an error was really committed, the master should first make a sign, that an error had been committed, and the boys should then correct each other, in the usual way of Lancaster schools. This might be the usual mode of recitation, without wholly excluding that now practised, which might occasionally be used to give the pupils an opportunity of exercising and showing their taste in phraseology. In like manner, in parsing, the first boy might state the part of speech; the second, the theme or root; the third, go through the appropriate inflection; the fourth state the accidents of the word in hand; the fifth its regimen, and the sixth the rule of syntax. It appears to us that, in this way, attention might be kept on the alert, as well in a classical as an elementary school, and that recitation might be made a much more searching test of proficiency. Without, however, enlarging on this subject, we may observe that Dr Niemeyer has given as a reason for the limited introduction of Lancaster schools in Germany, a circumstance, which has likewise prevented their general adoption here, viz. the goodness of the existing establishments. But since there is little doubt that in schools where only the common branches of English learning are taught, one teacher is, upon the Lancaster plan, competent to the instruction of four or five hundred pupils, it may deserve consideration whether the expenses of the schools in Boston might not be

materially lessened, and the schools themselves as well taught by the introduction of the new plan.

The great experience of Dr Niemeyer in the business of classical education, his reputation as a writer on the subject, and the acknowledged excellence of the German schools, were circumstances which led us to look with no little eagerness toward that portion of his book, which relates to the school at Eton. Dr Niemeyer speaks of the great difficulty of getting access to the interior of the English public schools, and observes that his friends in London dissuaded him from making the attempt to visit them. This fact contrasts strongly with the readiness that exists both in France and Germany, and we may add in our own country also, to subject the daily condition and progress of the schools to the constant inspection of all, who choose to visit them. On his way from Oxford to Eton, Dr Niemeyer formed the acquaintance in the stagecoach, of the wife of a country clergyman, whose son had just been appointed an under-master at Eton, to which place she was journeying, in order to arrange her son's household. On their arrival at Eton Dr Niemeyer was introduced by the mother to the son, and under his guidance saw as much of the establishment as could be shown to a stranger in holidays.

The college at Eton consists of two courts surrounded on all sides by buildings. The wing that divides the courts forms the lodge of the provost, the office for which Lord Bacon asked—and asked in vain. Another is taken up by a fine church. Opposite this, is the lower school with two sleeping-halls, in which are seventy beds for boys on the foundation. On the fourth side of this court, is the upper school in an immense hall. Under it, is a long cloister, in which in unpleasant weather the young men may take their exercise and diversion. The second court is occupied by the apartments of the fellows, the dining hall, and library. The foundation dates from the time of Henry VI, in the fifteenth century. A provost and seven fellows form the government of the college, and appoint to the offices. They are rather to be regarded as canons or prebendaries, as they have permission to marry, and are obliged to pass only two months annually at the college, unless filling some other office there. They choose the master, the lower master, and the seventy *collegers*. Eton

has several rich livings in its gift, and its revenues are very considerable. The provost, besides a splendid dwelling, has about £1000 sterling, and a fellow, besides being able to hold a living, has about £300 a year. The boys on the foundation are gratuitously supported, and are distinguished from the other scholars by a black gown, which they are always obliged to wear.

The scholars not on the foundation compose by far the greater part, and often amount to four hundred. They live near the college in private dwelling-houses, of which the mistresses are called 'dames.' These are responsible for the behavior of their boarders, and subject to lose the privilege of taking them, by repeated connivance at violations of the laws. The houses, moreover, are visited by the teachers, to know whether the boys are at home at the proper hours. The prices, which are permitted to be charged are all fixed. The amount for the most essential articles is about £60 per annum, which, however, does not defray more than half of the necessary expense. The vacations amount to sixteen weeks in the year.

Several of the instructers are also private tutors to individuals particularly committed to them, for which an ample compensation is given. In a word the average expence of a boy at Eton is about £170 yearly, which enables one to estimate how large a sum of money is thrown into circulation by the college.

The external appearance of things corresponds but indifferently with such an expenditure. The rooms of the students, both in and out of the college, appeared to Dr Niemeyer 'extremely small and poor,' accustomed as he was to the certainly not splendid accommodations of German free schools. The seventy boys on the foundation, have no place of abode, but in their sleeping hall, of which the disorderly and dreary aspect is compensated only by a free circulation of air through the broken windows. The furniture is throughout very deficient. In the school rooms the benches are about five inches wide, and the desks are of the plainest wood, and carry on their exterior, as do also the walls, traces of the youthful love of mischief. Tables are rarely seen in the school rooms, and no where are there marks of the neatness and elegance, which are almost universal in England. Dr Niemeyer avers that the appear-

ance of things in many of the schools in the villages and small towns of Germany is not worse than at Eton. The fare is very plain, consisting of mutton alone the year round.

As to instruction Dr Niemeyer repeats his remark on the difficulty of becoming acquainted by actual observation with its details. He has, however, stated some facts relative to it, derived from the information collected by him at Eton, and also from an essay written by Mr Küttner, a German who resided there several years as an instructer in the college. The whole body of students in Eton is assembled in two large halls; at Westminster the whole seven classes are crowded into one. In each hall at Eton, there are three or four desks at some distance from each other, from which the different divisions are instructed at the same time, without troubling themselves about each other. Instruction is wholly conducted on the principle of tasks assigned; little instruction is imparted by the teachers *vivâ voce*, and nothing written down by the pupil, and the business of the teachers is discharged in hearing the recitations and correcting the exercises. Instruction, moreover, is confined almost wholly to the Latin and Greek languages, and in this department the chief progress is made. Dr Niemeyer observes that in other branches, in geography, history, and natural history, the English schools can enter into no comparison with the German; that foreign languages and literature are wholly neglected, and that the religious instruction is very deficient. In the study of the classics, the attention is directed rather to a knowledge of the quantity and an acquaintance with the vocabulary, than to those critical refinements, which absorb a considerable part of instruction in the German schools, and in this respect Dr Niemeyer has the candor to give the preference to the English method; as more favorable to the formation of a polite acquaintance with classical literature.

The discipline of the English public schools is represented by Dr Niemeyer as a mingled system of indulgence and severity, which, while it leaves much liberty to the pupils of settling their own little difficulties among themselves, nevertheless requires with great strictness an obedience to the prescribed laws. Dr Niemeyer having expressed his surprize at the sight of long birch rods in one of the school rooms, was informed that scarce a week passes in which one or another is not 'sent up' to the head master (who alone has the privilege of inflict-

ing the punishment of the rod) to be flogged, 'in the way,' says our author significantly, 'that little children are chastised in Germany.' Notwithstanding this severity, however, our author observes that it would be a great error to imagine that the English schools are exempt from the disorders usually found in such establishments.

The foregoing is the amount of information contained in Dr Niemeyer's remarks on the English schools, and with it we must close our notice of his work. Without laying claim to the character of an indiscriminate observer, he is certainly entitled to that of a fair and candid one, and his work must be, by almost every class of readers, perused with satisfaction.

ART. XVI.—*Essays on Fevers, and other Medical Subjects, by Thomas Miner, M. D. and William Tully, M. D.* Middletown, Connecticut, 1823.

'Life is short, the art is long, occasion sudden, experiment dangerous, judgment difficult,' was the aphorism of the father of physic, which the experience of more than two thousand years has abundantly confirmed. The science of medicine, though among the most interesting to mankind, attracting, in all ages, the attention of all, and cultivated with nearly equal zeal by civilized and savage man, by the peasant and the philosopher, has advanced with a progress apparently little creditable to their united efforts, disappointing the benevolence of the philanthropist, and mortifying the pride of human nature. The pages of its history are too frequently the records of folly, superstition, and crime. There is scarcely a substance so virulent, disgusting, or insignificant, as never to have found a place in the materia medica, or a practice too horrid or absurd, to have been without an advocate among the countless multitude, who have been infected with the cacoethes medendi. The decrees of the empire and the thunders of Rome have been enlisted in defence of bleeding from a favorite vein; and the followers of Galen, in the enthusiasm of their wrath against innovation, did not hesitate to declare that they had rather be wrong with their master, than right with Paracelsus.

With so much of evil, however, some good is intermixed; and he who loves his brethren with all their vices and follies, and prefers to fix his eye on the bright side of human nature, is gratified to perceive, that the proportion of the good is much more considerable, than is at first apparent. If the profession of medicine has been disgraced by hot-headed zealots, compelling, by loud nonsense and arrogant dogmatism, that regard which is often refused to real merit, it has also given to the world a multitude of benefactors, whose services attract little attention, because they are met with every where and can be had at any time. If medical skill and learning were united in the character of Paracelsus with every vice, in those of Boerhaave, Cullen, Heberden, and Rush, they were accompanied with an unusual share of the virtues of humanity. If the doctrines have been often extravagant, their evil tendency has as often been counteracted by the plain sense and caution of actual practitioners. If too many of the articles of the materia medica are useless, they are also harmless. While the most violent and dangerous produce, in prudent hands, the most beneficial results, if they sometimes do harm in those hazardous cases, in which they are most likely to be employed, surely the restoration of health or preservation of life is well worth some of that risk, which we are every day wilfully incurring, for much less important considerations.

When we compare the actual state of medicine at different and distant periods, it is encouraging to perceive that its advancement however slow, is yet certain. Some of the harsh and dangerous medicaments of Hippocrates are now reserved for occasions of imminent hazard, whilst others are altogether superseded by articles, which possess all their good, without their evil qualities. Modern dexterity and knowledge of anatomy frequently accomplish, with little pain and trouble, what the ancients could only effect by torturing force. The frequent and periodical plagues of London are now only matters of history, and few in this country have ever seen more of the small-pox, than the indelible marks, which its ravages imprinted on the countenances of their parents.

This science has had its share in the good effects of that zeal for improvement and diffusion of knowledge, which has been so generally prevailing in Europe and America for the last half century. Its advancement, to be sure, is not to be

compared with that of its sister sciences. Its progress is still slow, and from the nature of the case, it always must be; but it has been so much accelerated by these circumstances, that it may be asserted without much hyperbole that it has been greater, during the last fifty years, than during the five preceding centuries. It must be admitted that physicians are not, yet, able in all cases, to supply an organ or a member which nature has denied, or accident destroyed—they cannot restore to the stomach, with a single miraculous pill, the tone which years of intemperance have impaired; they have no bark which can give to female delicacy of muscle, the 'vigour of the peasant's arm,' nor any preparation which can expand the chest, or extract the tubercles from the lungs, of hereditary consumption. In short they are unable, as yet, to satisfy many very reasonable expectations of their patients. But let them not despair of any thing, in an age which has seen the successful revival of the scheme of Taliacotius, and 'supplemental noses,' which are no longer fabulous.

These remarks have been suggested by the perusal of the work which is the subject of the present article, and of which we feel ourselves called upon, as the friends of truth and justice, as well as of the medical profession, to express our disapprobation. In this we are unconscious of being actuated by any prejudice or partiality. We have no medical system to support or overthrow. We are wedded neither to the lancet and hot water on the one hand, nor to opium and brandy toddy on the other. We believe in all, or either, in their proper times and places, and are ready to admit that there is a proper time and place for each. Moreover, we have no private grudge or malice against the authors of these essays. Of Dr Miner, we declare, even at the risk of arguing ourselves unknown, that we know nothing except his book, nor ever saw his name but on its pages. Of Dr Tully we have heard elsewhere, and always as a physician of skill and reputation. Neither shall we pretend to give any nice analysis of the particular mode of practice which they recommend, considering that as the province of works devoted more particularly to the subject of medicine. Our business is rather with the spirit and manner of the work, and those parts of it which relate to matters of which many of the community at large are competent judges—though we may now and then be tempted to

hazard an observation upon such more strictly professional passages, as seem to us remarkable.

We conceive, that the tendency of these Essays is in a high degree injurious, both to the members of the profession and to the community; to the profession, by depriving them of that public confidence which is essential to their success, their reputation, their very livelihood; to the community by giving them false ideas of the practice of physic, teaching them to regard with suspicion the best concerted means for their recovery or preservation from disease, and adding new and unnecessary terrors to some of the unavoidable calamities of life. Not that we fear, that such effects will really be produced, or at least extensively. The authors deal too much in assertion to be very convincing to that class of readers who are most likely to peruse their work. But the attempt is not the less reprehensible, because it may not happen to succeed. It is time, however, that Dr Miner should be permitted to speak for himself. The following extract is from the preface.

'It is of immense importance, that the present confusion of the practice of physic, in the treatment of acute febrile diseases should be known. The quantity of extraneous matter, with which it has been encumbered, during the last fifteen years, is immense. Some author is needed of so much independence of mind, that he is not *afraid* to hazard his popularity, by publishing a true statement of the most important facts.

'Should it be thought, that he has vindicated the cause of TRUTH and HUMANITY, with a degree of zeal and ardour, bordering on asperity, he has only to observe, that he can make no apology. When he finds it asserted, on the authority of the highest names, that the Bark is rarely serviceable in our fevers;—that blisters to the head are of no use in typhoid affections of the brain; that opium, in regular and repeated doses, during the stage of febrile exhaustion is inadmissible; that the mercurial action, when moderately excited during the *preparatory* stage, is of no other service, than as a test of the natural mildness of the disease; or that continued fevers are never cured by resolution, his charity is exhausted. He can attribute these assertions to no other sources, than ignorance, obstinacy, and, what is still worse, wilful misrepresentation.' p. vi.

Now we are the last persons to be sticklers for authority in medicine, or any other science. If a man is satisfied that he is right, whilst all the rest of the world are wrong, and

that in a concern of vital importance, we cannot blame his endeavors to enlighten his benighted contemporaries, provided they are made with modesty and decorum. Neither can Dr Miner reasonably blame us, if for want of that strong internal evidence of things, which seems sufficient for his own conviction, our *charity* for the rest of the profession should not be utterly *exhausted.* As to the correctness of the particular assertions, which have excited such indignation in the mind of our author, we offer no opinion. We leave these matters, as observed before, to medical men. But when we find the *highest names*, the names, as we afterwards learn, of Rush, Hamilton, Armstrong, Johnson, and others equally celebrated, accused of *ignorance*, *obstinacy*, and *wilful misrepresentation*, we are naturally led to inquire into the opportunities, which the accuser has enjoyed, of acquiring such superior information. And what are these ?—A practice of a certain number of years, (he does not tell us how many, but probably not more than fifty,) in the city of Middletown; a city 'comprising a population of more than twenty-six hundred inhabitants,' in which Dr Tully 'cannot find, that, between the revolutionary war and the year 1820, there have been half a dozen adults sick, at one time of the same acute disease,' and 'the health of which, in general, has been greater than that of almost any place of its size on the continent.' This immense practice has been shared too with, at least one, if not more, competitors. But then there was, in 1816, an epidemic of *a dozen cases* of spotted-fever, and another, in 1820, of 'fifteen decided cases of yellow-fever, besides three, or four, which there was good reason to suppose were broken up in the forming stage.'

'With these exceptions, (the cases, to wit., of those patients, whose constitutions have been undermined, or much impaired by previous sickness, age, or intemperance, and a few malignant ones in severe epidemics,) the writer is free to acknowledge, that he never saw a *regular* case of fever, either run its course, or prove fatal, that might not be fairly attributed to obvious neglect or mismanagement on the part of the patient, or nurses, or physicians.' p. viii.

These extracts from the preface, will, in some measure, prepare our readers for an account of the work itself. It contains fifteen essays by Dr Miner and four by Dr Tully, on

matters relating to fevers. Our limits will not permit us to attempt a separate analysis of each, nor is it necessary, since to use the words of our authors; 'It is presumed that on close examination it will be uniformly perceived that the subject' (in all the essays) 'is only placed in a different point of light.'

We shall content ourselves with noticing a few of the most prominent opinions. A leading one is that 'slow and moderate purging with calomel in the first stages, and the regular administration of opium, alcohol, and bark in the last, is the only proper *methodus medendi* in typhoid fevers,' and that the plan of thus subduing them in their early stage by calomel is entirely original with Dr Miner.

That the above method is a very good one in many cases of typhoid fevers, we allow; but, that it is the only one admissible in any, we doubt, because we find very eminent physicians sometimes recommending a different one. This disagreement of doctors may be accounted for, without supposing *ignorance* or *wilful misrepresentation* on either side, if the general term, typhoid fever, includes diseases which, agreeing in some general characteristics, are yet sufficiently different to require considerable variation in the mode of treatment, which we have sometimes suspected to be the real state of the case. Neither is the originality of the plan so obvious to those of us, who are not so well skilled, in the minute shades of difference between the practice of different authors. It seems to us that Dr Hamilton recommends purging, and that sufficiently slow and moderate, and also that he uses sometimes calomel and sometimes other medicines for the purpose. Armstrong and Johnson give calomel combined with opium, as well as our author. Chisholm and Warren long ago taught to use calomel and opium till the mouth was affected. In fact, there is hardly a modern author, of our acquaintance, who does not recommend these articles, in some form or other, as a part of the treatment of fevers, whether typhoid or not, or a physician, who does not use them. But it is clear, that they do not use them, in the same manner, as Dr Miner, or else they have different forms of disease to deal with; for, in what other way, can the Doctor's extraordinary success—in all cases but bad ones—be accounted for.

A peculiar excellence of our author's plan is, that, *in proper hands*, for that is very material, and with a little variation,

it will cure *typhus mitior*, as well as *gravior*, putrid sore-throat and lung-fever, measles, dysentery, rheumatism, every low acute febrile disease, marasmus, croup, yellow-fever and dropsy in the head, and we doubt not, that if there is any other disease, which the Doctor forgot to mention, it will cure that also. Another notion much insisted on, in these essays, is that all the diseases in Connecticut, and probably in the United States, for the last fifteen years, have the asthenic diathesis. We have not the clearest ideas of the proper evidences of *sthenia*, or *asthenia*, in any particular case. Perhaps all cases that require Dr Miner's plan of cure are asthenic; on this supposition, this doctrine of the change of diathesis may be an example of the manner of 'placing the subject in a different point of light.'

The indignation of Doctor Miner, like that of Luke Lundin, is particularly excited by 'those cursed old women, who take currently and impudently upon themselves to act as advisers and curers of the sick, and interfere with, disturb, and let, the regular progress of a learned and artificial cure.' He states that, 'in the whole course of his practice in typhus, of all who have applied within the first forty-eight hours, after the *obvious access* of the disease,—he is *pretty confident* that not one has proved fatal, in which the patient had not previously been tampering with emetics and cathartics.' p. 31.

For this grievance we can offer the Doctor nothing but compassion, fearing that any attempt to remedy it will always prove ineffectual. Most people will admit that it would be a great deal better—for the faculty—if mankind would never take any measure, respecting their health, without applying to the regular sources for advice. It must also be granted by all, but those abominable infidels whom we put out of the question, that many would thus escape severe diseases and premature death. But we are a self-willed and short-sighted race, and nothing but adversity will whip us into wisdom. Some of us are delayed by an habitual tendency to procrastination. Others by the absurd proverb, which inculcates the 'danger of dealing with the Doctor.' Others again are deterred by a narrow-minded consideration of the *honorarium*, which the vulgar call a *bill*. In short, from one cause or another, we often neglect the opportunities, which are always open to us, of avoiding a large proportion of the ills that flesh

is heir to. As it sometimes happens, and, we should imagine, not unfrequently in a city so salubrious as Middletown, that men escape, notwithstanding such unjustifiable imprudence, with very slight indispositions, they acquire such hardihood by impunity, that, nothing, short of yellow-fever, will recall many of them to a proper sense of the duty they owe to themselves and their friends, of consulting the faculty, on all possible occasions. Nothing but this will place before their eyes, in its true colors, the impropriety of allowing their wives, mothers, and nurses to flatter them with herb teas, or practice upon them out of Buchan, or Townsend, or the still greater enormity of recommending to others, what they honestly, but ignorantly, believe to have been beneficial to themselves. The world will be much altered, when its inhabitants neither give nor take advice without due consideration. Nor can either Dr Miner, or we, ever hope to see the time, when men will not sometimes act as their own tailors, their own cooks, and their own physicians, at the risk of bad clothes, bad dinners, or bad health. We could even, if necessary, offer some arguments in defence of occasional practices of this sort, and that without implying any disparagement to the brethren of the thimble, the ladle, or the lancet, or their several arts, all of which we respect and honor. But we reserve the result of our researches into this matter for some future opportunity, and proceed to the consideration of the doctrine, in Dr Miner's second essay, that medical authors are rarely practical men; that they represent diseases, as much milder than they really are; (and if they do, heaven keep us from the reality, when the descriptions of diseases, in any medical book, are enough to make a common man's hair stand on end;) that their practice is frequently (that is, we suppose, when, by any accident, they happen to be practical men) very different from their instructions; and that their personal experience can teach them little of the real difficulties of medicine, because that experience is confined to hospitals. As if there was any difference between the practice of physic in a hospital, and a private chamber, except that, in the former, the most formidable cases are always admitted in preference to milder ones; that the patients, the nurses, and the medicines, being all more completely under the control of the physician, it is proportionally easier for him to carry into effect his remedial processes, and of course to form

a more certain judgment of their real merit; that a man can often see, in the fever-wards of a large hospital, more cases of that disease, to speak within bounds, in one year, than the mere family practitioner can see in twenty; that he can, in such a situation, spend a life, in studying the phenomena of a single species of disease, instead of being distracted by an endless variety of maladies; and lastly, that, as every step of his progress is liable to be watched and criticised by a crowd of students and medical men, he is deprived of those facilities of concealing his real processes, or skreening his mistakes, which are so abundantly afforded by private practice. In plain terms, our author, in this essay, accuses such writers as Sydenham, Cullen, Rush, Hey, Armstrong, Hamilton, Clutterbuck, and Johnson, either directly, or by very obvious implication, of gross deception; and roundly asserts, that they were deterred from attacking the popular opinions of their day, by a mercenary regard to the general circulation of their works. We trust that such charges need no other attempt at confutation, than the simple statement of them. After perusing this essay, however, we feel ourselves bound to acquit the writer himself of any suspicion of this supposed besetting sin of medical authors, an undue regard for public opinion, when we find him deciding *ex cathedra*, that Fordyce, after a practice of twenty years, in a hospital containing an average of nearly four thousand patients, was yet unable to distinguish the paroxysms of a dangerous fever, from hysteric fits; that Dr William Hunter, 'with all his learning, must in acute diseases, have been but an indifferent practitioner;' and declaring in a grave scientific work, his belief in the truth of the shocking jest, 'that a medical diploma is sufficient to suspend, through a whole kingdom, the penalties annexed to a violation of the sixth commandment.'

In the eighth essay, entitled Experience, we are told 'that a prominent cause of the deterioration of medicine, in the United States, is the combination of the two professions, physic and surgery.' The principal argument in support of this position is, that a greater number of the symptoms of surgical diseases being objects of sense, these diseases admit of greater certainty of judgment and practice, than those which are more strictly medical. The surgeon, therefore, will acquire a habit of deciding hastily in obscure disorders, and

without taking into view all the facts relating to the case. Now it seems to us, that if a surgeon brings to a medical case nothing but his knowledge of surgery, he cannot but perceive it to be unlike those with which he is accustomed to deal; and, if an honest man, he will endeavor, by studying the symptoms, reading, consulting his friends in the profession, in short, by every means in his power, to ascertain its nature and the proper method of treatment. The more medical diseases he meets with, the better he will be convinced of the difficulty of understanding and properly managing them; that is, he will consider medicine, in the same light, in which it has been regarded by all its judicious professors, from the time of Hippocrates, who, *en passant*, was both physician and surgeon, to the present day, as a science of great difficulty, and not to be practised without care and deliberation. Another argument is, that 'the profession of surgery has, time immemorial, been second in rank to that of medicine.' The implied inference from this, is that they cannot be placed on a level, except at the expense of the latter. This, however, is the fable of the Lion and Man, especially when we recollect the language sometimes made use of by the distinguished surgeons of Europe, in relation to this subject. Other arguments are drawn from the difference, between the alleged dashing and desultory manner of surgical, and the slow and steady plan of medical practice, which it would be out of our prescribed limits to discuss. It seems to us, that all this reasoning is of little weight at the present day; that it can apply only to the surgeons of another age; the barber bleeders, itinerant lithotomists and cancer cutters; the chirurgeons, or workers with the hand; in short, to those mere mechanical operators, of which the race is almost extinct, as far as we know, in civilized Europe and America. Surgery is now a noble science, which, for the last half century, has given employment to some of the most philosophical minds; the full sister, if we may so speak, of medicine. The distinction between them, is, in fact, an artificial one, a species of division of labor, which can only be carried into complete effect amid the dense population of European cities. The innumerable necessities of the millions of London, can only be satisfied by dividing the duty amongst a host. Physician and surgeon are but the names of grand divisions, the classes and orders of the healing tribe. The ear,

the eye, the teeth, the stomach, every organ of the human frame, finds there an appropriate guardian. The occasional deformities even of the inorganic tipping of its extremities afford a name and a support to the humble art of the chiropodist. One man presides over the birth of the mewling infant, another conducts it safe through the perils of the cradle, and a third watches its advancing childhood; the accidents of youth employ a fourth, a fifth encounters the graver maladies of manhood, a sixth ministers to the peevishness of the lean and slippered pantaloon, whilst the seventh goes through the decent ceremonies of the last scene of all, and pays his cold and formal duties to unconscious imbecility. Multitudes are thus enabled to devote their lives to the observation of a single variety of disease, and the results of their eager competition and immense experience, the wisdom derived alike from their failures and success, is transmitted to us in 'bales and hogsheads.' But, even in Europe, the mere medical man is comparatively rare. The physician and accoucheur of the village is also its surgeon. The diseases incident to the fleets, the armies, and the colonial establishments of Britain, are managed by surgeons. One of the greatest improvers of physiological science, (upon which alone any rational medical theories can be founded,) whom the world has known, was John Hunter, a surgeon. Finally, whatever may be the efficiency of the cause in certain circumstances, we are unprepared to admit the reality of the effect, alleged by our author,—a deterioration of the practice of medicine in the United States.

We cannot leave this essay, without noticing the very logical inference, that, since our author has never failed in more than *one* instance, to cure consumption, when a fair opportunity has presented itself, the great mortality from that disease, in some of our large cities, must be owing to the mal-practice of physicians. When we consider this remarkable success, and reflect that the remedies recommended by him have been so powerless in other hands, we cannot but suspect that there is something more in all this, than meets the eye. We should be sorry to suspect so frank a person as Dr Miner, of any underhand proceedings; but unless he has obtained the secret of the Balm of Gilead, or something of that sort, we cannot tell what to think of it.

The ninth essay, on the varieties of the pulse, would have

done honor to the acuteness of Solano, or Nihell. Among the different kinds of arterial vibration enumerated by our author, we were particularly struck with the designations of three, the *gaseous*, the *suffocated*, and the *shattered*. Those physicians, whose sensibility of finger is not sufficiently erudite to perceive some of these nicer modifications—and who must, therefore, fall under the same condemnation with Dr William Hunter, that of being 'but indifferent practitioners in acute diseases,' will perhaps find consolation from the following opinion of the amiable and experienced Heberden, 'all who begin the study of physic, must find in the doctrine of the pulse, as collected from medical writers, a great deal which they do not understand; and all, I imagine, who have advanced a little in the practice of physic, can have very little doubt of its not being understood by the authors themselves.'

We looked into the twelfth essay, in which the author 'hopes that nearly all the rubbish, under which the subject of crisis has been so long buried, has been removed,' with some curiosity. We find it there asserted, that fevers certainly have critical days. But as a host of authors, with Asclepiades and Celsus at their head, have asserted the direct contrary, and, moreover, presumed to ridicule the notion, as without any other foundation, than the Pythagorean doctrine of the power of numbers, and as the case seems to admit of the evidence of experience alone, we imagine that the fevers of Middletown are more strongly marked, in that particular, than many others.

In the second, or Dr Tully's part of the work, our limits will only permit us to analyze the account of the cases of yellow-fever, which occurred in Chatham in 1796, and those before alluded to, which occurred in Middletown, in 1820. Every fact relating to the question of the supposed contagious nature of yellow-fever, is at once so interesting and important to the community, that we trust our readers will excuse the length of the extract which we shall make, in relation to this subject. The history of the yellow-fever in Chatham, after premising that the town 'is remarkable for its salubrity, and exemption from endemic and epidemic diseases,' is as follows.

'In the month of August, 1796, during the prevalence of the usual general health in the village and adjacent country, when neither simple fevers, dysenteries, nor choleras, had any existence in that quarter, and when there was nothing peculiar in the

weather, unless perhaps it might have been considered as rather warmer and dryer than usual, the brig Polly, Russel Doan master, owned by Bulkley and Doan, arrived from Cape St Nicholas Mole. Her outward cargo consisted of oats and other grain, which was sold for cash; so that she returned merely in ballast, and in as cleanly a state, as such vessels usually are, after a voyage. On her homeward passage, Mayhew Tupper, one of her crew, died on board with yellow-fever. The clothes, which he wore while sick, were thrown overboard, though a sail, upon which he lay when he died, was retained. The vessel afterwards underwent a sailor's washing, which, in this instance, consisted in scrubbing with cold sea-water, and the subsequent application of vinegar.

'On the arrival of the brig at this landing, Newell Hurd, a young man of about eighteen years of age, and John Ranney, were employed to assist in clearing her out. They were known to handle the sail on which Tupper died. At the same time Sarah Exton, wife of one of the crew, and Elizabeth Cook, who lived in the same house, were employed in washing some of the sailors' clothes. A few days afterwards, these four persons were attacked with yellow-fever. In about five days, viz. on the 29th of August, Hurd died, and within twelve hours, Ranney and Sarah Exton. The alarm in the village was already so great, that Sarah Exton was left alone in the night, and was found dead in the morning, with her infant child at the breast. Elizabeth Cook was soon added to the number of victims; and in quick succession, the infant child of Sarah Exton, together with Lucinda Norton, a tailoress, and member of the same family, who had been employed in mending some of the sailors' clothes, and Elizabeth and Rebecca Carey, daughters of Elizabeth Cook, who were immediately taken sick, and survived but a few days. The whole of these cases commenced and terminated within the space of a fortnight. Sometime during their existence, Gershom Lord, who acted in the capacity of clerk to one of the owners of the vessel, who had been on board of her, but had had no intercourse with the sick on shore, was taken with the same disease, and after a short but a severe illness, recovered. Beside this there were two or three other imaginary, or at most light cases, among those who had intercourse with the vessel, which soon recovered. Sometime while the brig was lying at this landing, but whether during the existence of any of the other cases, or subsequently, I have not ascertained, two young men, passing along the river in a boat, in the night, hauled along side the brig, and slept till morning in her cabin. Soon after they reached their father's house, both sickened with yellow-fever, and one died, but the other recovered.' pp. 359—361.

Accounts of this kind are always to be regarded in the light of depositions, and inferior, as evidence, to the oral testimony of persons who may be subjected to cross examination; since the deponents, however honest and impartial, may often omit circumstances, which, in their view of the subject, are of little consequence, while in another, they are highly essential. We do not mean to dispute about names, or deny, that the informants of Dr Tully, for we have this account at second-hand, were competent judges of the real nature of these cases, or that they were truly instances of yellow-fever. We are also willing to admit that they all originated from the vessel in question. But we deny the certainty of their having been imported, in the technical sense, which the word seems to have acquired in relation to this disease. Our opinion is that putrefying vegetable matters will frequently cause yellow-fever in hot and dry weather, whether they be in the hold of a ship, or the cellar of a house, in a dock, a kennel, or a marsh. We suppose, and we have a right to suppose, though we have no opportunity of asking the question, that a vessel, which had carried a cargo of grain, whether in bulk, or not, to a climate within the tropics, in the month of July or August, did contain and did bring home a very considerable quantity of such noxious matter among, or beneath her ballast, and was yet in as cleanly a state, as such vessels usually are after a voyage; and we have no doubt, that the informants of our author would have found this to be the case, if their attention had not been so much attracted by the 'sail, on which Tupper died.' Of the eleven cases, five are stated to have exposed themselves to the deleterious effects of this miasma, by going on board the Polly, whilst it is nowhere mentioned that the other six did not. On the contrary the following reasons afford a strong probability, that they did. First, that a vessel newly arrived from sea, is always, in a small village, an object of curiosity and interest to the inhabitants, especially the lower classes, and those who reside about the landing-place. Secondly, we are told, in the next essay, that the people of Middletown 'were more or less in the custom of visiting vessels from the West-Indies, for the purpose of obtaining fruit, &c. &c.' And we presume the people of Chatham had the same custom, since nothing could be more natural. Lastly, these six persons were among the most likely of all to follow this practice,

being the relations or intimates of the crew, or those employed about the vessel, apparently tenants of one house, and the most probable party in the world to take a walk on board the brig after tea in a warm summer evening, and enjoy the air of the river. There is nothing strange in all this, nor in their dying soon after of yellow-fever. The thing is unhappily too common in many of our seaports. No violent suppositions are necessary to reconcile this account with our opinion of the non-contagiousness of this fever. The conclusion to be drawn from it seems to us too obvious to be mistaken, viz. that no more persons from the shore, than are absolutely necessary should be permitted to go on board vessels in such circumstances, till they have been thoroughly cleaned and ventilated, and that every person already there, who can be spared from this hazardous duty, should be not only permitted, but exhorted, and, if necessary, compelled to seek safety by flight to a less noxious vicinity. We would direct the attention of the reader to one other circumstance only in this account and the succeeding part of the essay, we mean the inhuman desertion of the sick, which will always take place, to a greater or less degree, wherever the doctrine of contagion is the popular belief.

Of the fifteen cases detailed in the account of the fever in Middletown in 1820, the two first appear to have arisen from circumstances, not common to the remaining ones. We shall abridge the account of them thus. Fargo, a common sailor, came from Savannah, at or about the time, when yellow-fever prevailed there. He arrived at New-York, the 25th of May, and in the evening of the 27th was first taken ill, 'in consequence, as he supposed, of some over-exertion in unloading his vessel.' He was well enough on the 30th to sail, in the schooner Antelope, for Middletown, where he arrived, the 3d of June. He was found at that time to be affected with yellow-fever, and died on the eleventh, eight days after. Capt. Vail, of the schooner Antelope, in the latter part of May went to New York, where he remained with his vessel, in all about a fortnight, chiefly at Burling-slip, though she was hauled one day to Coenties'-slip. 'On being asked whether any vessels from foreign ports lay in his vicinity, he at first, thought there was none; but on farther consideration, he recollected one from the West-Indies, with considerable fruit on board, where he

thought Fargo had been.' Capt. Vail returned to Middletown with Fargo, as stated above. While on his passage he began to be ill, and was seen, immediately after his arrival, by Dr Tully, who considered his disease to be yellow-fever. The case is stated to have been mild; he began to recover after fourteen days. The Antelope appears to have been a perfectly clean vessel. Several other persons came from New-York in her at the same time, who were not affected with the fever.

We conceive that these cases may he explained, without supposing Fargo to have brought the disease from Savannah and communicated it to Capt. Vail. Indeed we are not sure that this is the opinion of Dr Tully. He leaves it unsettled whether it was originated in this way, or by the vessel from the West-Indies. We believe that the fatigue of loading, unloading, and hauling vessels in hot weather from one wharf to another of a city where we have good reason to think domestic causes of yellow-fever frequently exist, (and there are few large ports in the Union, in our opinion, without them,) will occasionally produce that disease.

Of the remaining thirteen, three were ascertained to have been on board the brig Sea-Island, from St Jago de Cuba, which is described as being 'in an extremely foul and offensive state, from a quantity of putrid corn and other decomposing matters behind her ceiling.' It is not certain that the others had been, but very probable, for reasons similar to those alleged above in considering the cases at Chatham. All the persons were, from their acquaintance with the crew, local situation, and other circumstances, very likely to do so; and it is observed, that while the Sea-Island lay at Middletown, there was the freest communication between her and the shore. It is further stated, that after the fever became alarming, there was an opposition, on the part of many of the inhabitants, to any investigation of the fact of individual communication, so violent as to account for the difficulty of proving with respect to most of the cases, what was in itself sufficiently probable. We shall not enter into any analysis of the particular cases. Doubts might be suggested, whether *all* these were really yellow-fever. But we abstain from criticism of that sort, since the opinion of a reputable physician, on the spot and acquainted with the appearance of that disease, is evidence which it would be arrogance to distrust, on the sole ground that his ac-

count of it may not happen to agree entirely with our notions. We are well aware that fevers intrinsically of the same character and of course to be included under the same general denomination and requiring similar modes of treatment, may yet vary very considerably in the course, the degree, and the nature of some of their symptoms. A matter of fact, which we would recommend to the consideration of committees of health, especially those, if such there be, who think themselves warranted to vote down the existence of a disease, because it was not originated according to rule.

We have treated parts of this work, with something like levity, but we desire in conclusion to address the authors, and more particularly Dr Miner, in the language of grave expostulation. We particularize Dr Miner, since our greatest objection to Dr Tully, is, that he has authorized by his association in this work, what, we believe, he would never have written. We desire them to reconsider such passages, as the following:

'It has been calculated, that within a hundred years from Sydenham, the indiscriminate use of the lancet, and the antiplogistic regimen, so highly recommended by him, was the cause of more premature deaths, than all the wars that ravaged Europe, during that period.' p. 13.

Who ever did, who ever could make such a calculation? The very attempt would be alike impious and preposterous. Yet this monstrous hyperbole is set down without any qualification, among the axiomatic sentences, which commence the work, and is followed, in the very next sentence, by a similar charge against the practice now followed 'by the greater proportion of practitioners.' We ask these authors, what would be their indignation, if their medical brethren should hurl back, with equally justifiable virulence, the charges of ignorance, obstinacy, skepticism, felony, and murder, with which they are repeatedly assailed in these essays? What will be their own remorse, if increasing years and experience should change their opinions? And has the history of medicine, and the biography of eminent physicians, persuaded them that such change is impossible? No men seem better aware of the uncertainty of medical science and the proverbial variance of its theories. Can they draw from this knowledge no lesson of modesty or charity? One would suppose, from some of the language of these essays, that the physicians of the present day, except

those few, who, as our author expresses it, 'have not bowed the knee to Baal,' were a combination of ignorant blunderers and unprincipled hypocrites, whose god was mammon, whose very 'cures are escapes,' and by whom 'hecatombs are annually sacrificed;' and that 'the practice of physic is the last profession, that an honest man would wish to engage in.' But will the world believe this of those, whose privileged feet must enter the sacred *penetralia* of domestic life; who must continually become the confidants of their follies and their faults, and on whose skill and integrity they must so often rest the preservation of their health, their honor, or their lives. And can no honest man wish to engage in a profession, which is forever holding up to view, the policy of benevolence and sympathy, of tenderness for the health and happiness of his fellow-creatures, and charity for their weaknesses,—which connects his daily avocations in the strongest manner with the exercise of the social feelings, and enforces the duties of morality by the powerful sanction of immediate interest? Will men, we repeat, believe these accusations? And if they will not, need we intimate to the accusers, what will be believed of them. Our authors inform us, that they found it expedient to omit several essays in this volume, which they hope soon to publish in another. But, if these are of a similar character to those before us, we entreat them for the credit of the profession, of their country, and of human nature, to refrain from their publication.

Art. XVII.—*The Principles of the Holy Alliance; Or Notes and Manifestoes of the Allied Powers.* London, 1823.

These papers are well calculated to excite reflection in the mind of every liberal statesman and national jurist. They afford the strongest indications, that have yet been given, of a settled determination on the part of the allied monarchs, to preserve by force the ancient system of government, from any reformation; unless proceeding from a quarter, where, hitherto, every thing savoring of an innovating spirit has been carefully repressed, and where all reformers must necessarily meet with

their natural and eternal enemies. If the governing principle of these documents be once established—that all reformation originating with the people, or caused by their interference, is inconsistent with the welfare and repose of Europe, and as such, is to be put down by the combined arms of foreign powers; we may indeed abandon all hope of any melioration in the condition of mankind; except through the struggles and throes of a convulsion not inferior in horror and bloodshed to the French revolution. Instead of partial reformation confined to each particular kingdom and effected at different periods; the peace of the world will be destroyed by a total and general revolution, in which the aristocratic and liberal parties throughout christendom will be engaged in active hostility. The only effect of any combination, like the holy alliance, to put down the spirit of revolution without extirpating its causes, must be to retard the progress of innovation, until the revolutionary excitement shall have accumulated beyond the power of resistence or control. To expect that this result will be averted, by the voluntary surrender on the part of the privileged orders of their immunities, is to hope for an event contrary to all experience. It is to suppose a change in human nature to be easier than a political revolution. The natural tendency of all aristocratical and monarchial institutions is to augment the power in the hands of the rulers; and while the wheels of government move on without interruption, and the splendor of the privileged orders is maintained at the expense of the laboring portion of the community, they are not sensible of the misery of those beneath them. They so seldom come in contact with the inferior classes, that they feel no sympathy in their condition, and before it is displayed by a surrender of any of their privileges, they must be reminded that government was established for something besides the enjoyment of kings and nobles, by complaints that never proceed but from a desperate people, and are conveyed in a voice, whose very tones speak force and violence.

To insist, therefore, that all reformation must proceed from the monarchical part of the government, (a proposition which of itself presupposes a consciousness of imperfection rarely if ever felt,) is sufficiently absurd. But when to that is added the monstrous maxim, that all innovation proceeding from the forcible interference of the people with their rulers, is to be

crushed by the armies of surrounding nations, they together form a theory of despotism, at once subversive of the laws of nations and the best hopes of mankind. The political regeneration of Europe is placed at a boundless distance, and is only to be expected, when by the gradual operation of those causes, that have so much enlightened the public mind in the old world within half a century, the oppressed in all civilized kingdoms shall be arrayed in open opposition to their oppressors. At what time this state of things shall take place it would be imprudent to prophesy; but that this crisis is not far distant, may be easily foreseen by all, who have examined the present political and social state of Europe with the slightest attention. The general diffusion and increase of wealth, the extension of knowledge to the lower classes, and the great improvement in the condition of men in almost every particular, had, in the infancy of the present generation, rendered the actual situation of society inconsistent with its existing civil institutions. Deriving their origin from the warlike barbarians, who established the feudal system, and among whom military science and courage were the only requisites to high station, and the best lance and the strongest arm were the most indisputable titles to rank and property; they necessarily became unsuitable to a commercial community, in which industry, enterprize, and economy were regarded as the best qualifications to ensure respect and power. The ignorant warriors who overran Europe during the sixth and seventh centuries, and who laid the foundations of most of its civil institutions, as conquerors of the countries they invaded, according to the prevalent code of war, took absolute possession as in property of the land and its occupants. They sought to transmit their power to their latest descendants, by confining their attention to warlike pursuits, and provided for their support by appropriating to themselves the productions of the soil and the labor of its inhabitants, who were divided among the conquerors as appendages to the land. These claims were at first maintained by the same force, with which they were acquired, and after the victors and vanquished were amalgamated into one community, by the juridical powers assumed by the seignoral lords within their respective domains. They were thus interwoven as it were into the constitution of society. This assumption of rank and superiority was not resisted, by

the dispirited and vanquished cultivators, happy in the preservation of their lives; and the subsequent generations growing up under that system, (which was tolerably well adapted to the savage state of the world,) were not tempted to innovate upon it, by those provocatives to an inquiring and adventurous spirit, which are afforded by modern society. On the contrary, they continued to perform the task assigned to them in the social system, viz. that of laboring for the benefit of their feudal lords, without profit or reward. The hereditary claim of the nobility to these unpurchased and unmerited services, could not long exist in any except a military community. The necessity under which the cultivators then labored of seeking protection against the barbarous hordes, which the northern regions were constantly pouring forth to devastate and plunder the more fertile countries of the south, induced them to acquiesce in the exorbitant price, that was demanded for the services of their military lords. A respect too was felt by the peasantry for a nobility, who displayed in so eminent a degree the attractive qualities of a warlike race, and whose offspring stimulated by their fathers' example, and the manners of the times, were early initiated and excelled in those exercises which exalted their ancestors to their high stations. By these means, the notion of hereditary rank was justified, and the privileges of the feudal aristocracy were sustained by popular sentiment, long after the qualities, which had earned and preserved those immunities, had become less necessary for the rulers of a nation.

The laws of primogeniture and of entails all tended to the same object, viz. to perpetuate and augment the power of the privileged classes; and whilst the mass of property consisted of land and its raw productions, their privileges rested upon the sure foundation of enjoyment and ability to maintain it. Their tenants, who belonged to them by law and obeyed them from habit, formed a large portion of the community, and with the courage and military skill of their lords to direct them, would have easily overpowered those inhabitants, who felt disposed to resist their authority. In a society thus constituted, power must have become concentrated in the hands of a few; where it would be augmented until it was rendered intolerably burdensome to the rest of the community. Thus in most of the nations adopting the feudal system, we find the nobility

claiming to exercise privileges inconsistent with the very end of society, while the cultivators of the soil, or the serfs, were reduced to a condition, but little if any better than that of domestic cattle. From this state of things the political institutions of Europe derive their origin. Here we see the beginning of the privileged classes, of their independent and conflicting courts of judicature in the same kingdom, and of those feudal institutions in general, which, by the progress of society, have been rendered such insufferable abuses in modern Europe. The institutions that were well adapted to a time in which agriculture was the chief productive art, and war the chief end of government, were no longer tolerable, when the manufacturing and commercial arts had become the main business of men, and governments devoted their efforts to develope the resources of their respective countries. The great amount of real property, which was monopolized and withdrawn from general use by the nobility and the church, (enriched as it was in the dark period of religion,) was also at variance with the spirit of an age, in which an active circulation of capital was required by the habits of the community. Many efforts have been made to reform these abuses, and to render the political institutions of the old world more conformable to the advanced state of society. The barriers, behind which the hereditary aristocracy had intrenched itself, have been partially destroyed, and individuals, who had obtained wealth by commerce, or influence by talent, have been received into its ranks, thus conferring splendor and strength upon that body, to which they thought it an honor to be admitted. The real property of the country has been rendered the subject of commerce, and a general revolution has become manifest in the jurisprudence of Christendom. But still most of the obnoxious institutions remain. The mass of real property on the continent is placed beyond the reach of commerce, by the great wealth of the privileged orders, and by the independence of the two great landholders, the crown and the church. The nobility still exercise privileges inconsistent with just and equal laws, even when the qualities which elevated them to rank are no longer peculiar to that class, and other requisites are demanded for public men, in which they are still more deficient. In many countries independent and seignorial judiciaries are tolerated; a system of partial and unequal taxation is preva-

lent, and the whole face of society presents the revolting spectacle of the civil institutions in open or secret hostility with the habits and wants of its members. The great spring that has been given to the public mind by the American revolution, and to productive industry by the vast improvements in machinery within half a century, has contributed to place these in still stronger opposition. The undefined and general feeling of dissatisfaction, that slumbered without any specific object, has grown by the operation of these causes, and by the opposition of the advocates of the ancient order of things, into a settled and active hatred against all the institutions originating in the feudal system; until we find the absolute governments in alliance for the purpose of forcibly supporting the establishments that the friends of liberal principles have determined to abolish.

The principles promulgated in the manifestoes of the allied monarchs will draw the line of demarcation between these parties more distinctly. If their conduct, since the downfall of Bonaparte, had not already convinced, these documents must convince every person who values political freedom, that there is no safety for the advocates of liberal doctrines in any corner of Europe, while the league between the continental despots subsists unbroken. This conviction will produce a sympathy and correspondence between the friends of liberty in every country, that must swallow up all local and even national attachments, and lead them to unite against the holy alliance, and may probably bring on the final contest sooner than it would otherwise take place. The war against Spain, and the state papers justifying it, proceed upon the simple *axioms*, that the monarchical branch of the government is the only part that is to be regarded as sacred, that it is beyond the reach of reform, and that all political innovation can rightfully proceed only from the free will and voluntary grant of the sovereign. From these undeniable maxims, as they call them, they draw the corollary, that any violation of them may be punished by the military interference of the adjoining kingdoms, supported by the whole force of the alliance. All pretences of danger to their own quiet from the intrigues of the new rulers are laid aside as unnecessary to disguise their designs, and the plain principle of interference with the political constitution of the country in which the reform has been adopted, on the

ground of an innovation against the royal will, is unequivocally advanced. In this enlightened age, is this monstrous proposition, which heretofore has been scarcely heard of but in the adulatory address of some wretched court parasite, for the first time inserted in the public manifestoes of civilized monarchs, and sought to be engrafted upon the national law of Europe. The allied powers are united to support it, and it must of necessity reduce the liberals in all kingdoms to make common cause against them. The war is waged not against revolutionary Spain alone, but against the free principles of government in that, and through that in all countries. The alliance aims at the destruction of the British as well as of the Spanish constitution, and considers them both as equal nuisances, and to be abated in the same manner, as soon as circumstances will warrant the attempt. That we may not be accused of precipitancy in assenting to this conclusion, we will proceed to lay before our readers the circumstances under which the holy alliance was formed, and to examine the principles promulgated in its official documents, and the acts authorized by the parties to that league.

The first twelve years of this century may be regarded as an era in the political history of the world. The ancient governments of Europe had found the principles of the French revolution too powerful for their means of resistance. Aided and developed by the extraordinary genius and energies of Bonaparte, they had overspread christendom, shaking the foundation of thrones, paralyzing the strength of the privileged orders, and literally 'with fear of change perplexing monarchs.' The feudal system was overthrown in France, and by its downfall in that kingdom a fatal blow was given to all institutions of the same family in other countries. The invasion of Spain, though unjust and indefensible, was not without some good effects. The inquisition was abolished, together with the commercial monopolies, the unequal and oppressive imposts, and the independent and seignorial courts of judicature. Like a fire that had passed over the country, though it had destroyed vegetation, it had given activity to the soil and purified the atmosphere. The Spanish colonies were affected by the same event, and the destruction of the government in the mother country also severed the unnatural chain which bound them to Europe. The commercial supremacy of Great Britain trembled on the verge of ruin,

and it seemed as if a new and sounder state of things was about to grow out of the convulsions of France and the injustice and violence of the master of christendom. This happy consummation could not indeed be expected, while, in full possession of the resources of his empire and of absolute power, Napoleon went on in his career of usurpation and aggression upon the surrounding kingdoms. When, however, he had met with so severe a check in Russia, and subsequently, by the rising of the German people, had been compelled to retire beyond the Rhine even to his capital, the allied monarchs might have dictated a peace, that should have put it out of his power again to disturb the quiet of his neighbors, while the rights of the French nation were respected. By this course they might have secured the lasting tranquillity of the civilized world. The people of France would have been unwilling to enter the lists with combined Europe a second time, and Napoleon would have been obliged to listen to their entreaties for an interval of repose. The privileged orders and crowned heads would have felt the necessity of respecting public opinion, while the people would have been contented with the great improvement in their political condition; and the benefits resulting from the partial destruction of the feudal system, would have remained to compensate mankind for the temporary miseries of the French revolution.

But the heads of the coalition seemed incapable of profiting by the great moral and political lessons that had been presented by the events of the preceding twenty years; or they had acquired knowledge only to misuse it. The demands of the allies were augmented in proportion to the diminution of the power of Bonaparte, until they lost their moderation in the intoxication of success, and undertook to impose a family upon France, which was the abhorrence of the majority of the people, as associated with the burdens that they had shaken off at such an expense of lives and property. From affirming that they had no intention or desire to interfere with the internal concerns of France, they proceeded to declare, when at Frankfort on the Rhine, in December, 1813, that 'they would not lay down their arms until the political state of Europe should be reestablished anew, until immovable principles should have resumed their rights over vain pretensions.' In this document was first displayed a spirit totally different from that in

which they had until then prosecuted the war. The independence of Europe, the unjust violence and grasping ambition of France were not spoken of; but a new proposition was advanced, which could not be comprehended, until explained by subsequent events. On the first of March, 1814, having advanced into France with every prospect of ultimate success, the allied powers entered into a treaty at Chaumont, in which they bound themselves 'never to lay down their arms until the *object of the war, as they have agreed upon it among themselves*, should be fully obtained.' In the fifth article of the treaty they spoke of consulting, in the moment when peace with France should be concluded, upon the means necessary to preserve the peace of Europe. This treaty, which may be regarded as the basis of the present public law, or legitimate doctrines of Europe, was to endure twenty years. For what purpose it was formed, and for what objects additional concert was premeditated, can be understood only by attending to the subsequent acts of the high powers. The object that was obscurely hinted at in the Frankfort manifesto, they deem themselves strong enough to acknowledge when at Paris; and they there declared, that they would not treat with Napoleon, nor with any of his family, and 'that they respected the integrity of France, such as it existed under her legitimate kings.'

This declaration plainly evinced their resolution to deprive the French people of their right to establish their own government, so far as to render the abdication of Bonaparte essential to the peace of his empire. This resolution was plausibly defended on the ground that the inordinate ambition, great genius, and unexampled energies of that man, had rendered his possession of power incompatible with the repose of Europe. Still they cautiously avoided any thing resembling dictation to the French nation of the dynasty to which it must submit. The public mind was not yet prepared for the development of their ultimate designs, and a too open declaration of their principles might have caused a reaction that would have been dangerous in the extreme. The battalions of Bonaparte, though weakened, were not dispersed; the national guards still held their arms, and, in the midst of a brave and armed people, the bare proposal of forcing a constitution and monarch upon them might have roused a spirit that would have proved fatal to the projects of the holy league and restored the fallen

fortunes of Napoleon. Caution was therefore necessary, and duplicity, in conformity to their usual policy, was resorted to. Upon entering Paris, the allied monarchs promised, in the face of the world, 'that they would recognise and *guaranty* the constitution, which the French nation should give itself,' and they invited 'the senate to appoint a provisional government capable of providing for the want of administration, and of preparing such a constitution as might be adapted to the French people.' This guarantee was signed by the emperor of Russia on the 31st of March, 1814, and declared by him to express the intentions of all the allied powers. As it was never disavowed, we may safely conclude that they were parties to and sanctioned this guarantee.

In this manifesto was contained a full and express acknowledgment of the right of the people to alter their political constitution, a right which they had assumed and vindicated in the midst of unparalleled violence and tumult. They now deny the truth of this principle, but this does not destroy the force of their acknowledgment; neither is it invalidated by their subsequent refusal to comply with their guarantee. This may show perfidy and duplicity on the part of the allied monarchs, and that for temporary purposes they could stoop to promise to the people, what they never meant to perform; but the fact, that their guarantee was offered and accepted, demonstrates their acquiescence in that great principle, which they now seek to subvert by policy and arms, viz. the right of the people to change their government. In compliance with this request, a provisional government was established by the senate, and on the 6th of April, 1814, it presented the constitution, which it had formed, to the nation. In that instrument, the right of the people to alter their form of government is expressly asserted. It further stated, 'that the French people call freely, to the throne of France, Louis Sanislaus Xavier de France, *brother* of the *last* king, and after him, the other members of the house of Bourbon, in the ancient order.' In the 29th article, provision is made for submitting the constitution to the people for their acceptance, and Louis was to be proclaimed king as soon as he had signed and sworn to the constitution. He consequently was not to be proclaimed king, before he had performed that condition; and the allied powers, in the character of guarantees, were bound to see that he faith-

fully performed it. Louis the XVIII, who, while these preparations for his restoration were going on, had remained in England, began his journey to Paris, then occupied by the allied armies, neither assenting to, nor rejecting the constitution, but preserving a profound, and, as we the think, a deceitful silence, with regard to the form of government, which should be established in France. His brother indeed, who was in Paris, and acting as his representative, encouraged the belief of his approval of the constitution; but Louis made no public declaration of his opinion on that subject, until he imagined himself firmly established on the throne of his ancestors. As as soon, however, as Napoleon had left France, viz. on the 2d of May, 1814, at St Ouen, Louis issued a proclamation, approving the *basis* of the constitution, but condemning certain articles, which, in their present form, he declared could not be considered fundamental laws of the state. As he could not accept a constitution necessarily requiring revision, he convoked the senate and legislative body to meet on the 31st of May, to examine one, which would then be placed before them. By this declaration, he denied the right of the French nation to frame a constitution for the government of the kingdom; and he violated the guarantee of that right by the allied powers. It then became their duty to enforce it. Their pledge, (the most solemn that could be given, by monarchs to a people in arms,) was forfeited by supporting Louis upon any other condition, than that of his absolute acceptance of the constitution framed by the senate. They had invited the nation to recall him upon that condition, and had promised to guaranty its performance. The objection of Louis, to the *form* of certain articles, and his promise to present an unexceptionable constitution to the nation, even if sincerely given, were not equivalent to the unconditional acceptance that was promised. But the objection of the king was to the substance and not to the form, and the promise, (if given for any purpose except to obtain time,) was never executed in its proper sense. The constitution of the senate asserted the principles of freedom; the instrument, framed by Louis, was founded upon the doctrine that 'the breath of worldly men cannot depose the deputy elected by the Lord.' In the preamble, he claimed the throne, not as it was offered to him, as successor to Louis XVI, called freely by the French people, but as successor

by indefeasible right to his nephew, Louis XVII. He degraded the constitution into a charter, prefacing his grant with an assertion, that, in France, all authority resided in the person of the king. After proving by history, the degraded condition of the French people in former times, and declaring that they owed their present immunities to the generosity of their sovereigns; and deducing from these premises the necessity of preserving the royal power and prerogative, he concluded with 'granting, conceding, and releasing,' (in the form of a deed at common law,) 'to his subjects, the privileges contained in the constitutional charter.' It is unnecessary to point out the differences between the charter and the constitution of the 6th of April. The two instruments rest upon different principles, and all comparison would be useless. One provision however may be quoted, as a specimen of the whole. By the constitution, either legislative body was enabled to propose laws, excepting for contributions; by the charter all laws originated with the king.

What excuse, but that of increased power, can be urged for this breach of faith on the part of the allied monarchs? It certainly cannot be pleaded in justification of their inattention to the conduct of Louis, that it was a matter concerning the internal government of France, with which they had no right to interfere, and that when once on the throne, his subjects and he should have decided their differences without a foreign arbiter. Of this subterfuge they have deprived themselves, by their interposition after the return of Napoleon from Elba. Their right to interfere was claimed under the capitulation of Paris. The committee of the congress of Vienna, in their report of May 15, 1815, put it solely upon that ground. They considered the French nation as a party to that capitulation, and that their conduct, in recalling Bonaparte, was a violation of that treaty. If that treaty was binding upon the French people after the return of the Bourbons, it was binding upon the allies, and their solemn guarantee of their right to form their own government subsisted in its full force, unaltered by the restoration of the ancient dynasty. Interference in behalf of the people was as justifiable as interference in behalf of the monarch, and that they did not comply with their guarantee, while they did compel the French nation to perform its part of the capitulation, only proved their total indifference to prom-

ises or principles, except as they conduced to the establishment of a despotic system of government. It was not a little remarkable, that whilst the allied powers were declaring their intention of not interfering in the domestic affairs of France, they considered the French people as distinct from their government,—so much so, that the former was regarded as a party to, and bound by a treaty to which the latter never assented, and a war was waged against the nation for its infraction of that treaty, while the invaders were in alliance with the government. This inconsistency displayed in a striking manner their unprecedented violation of public law, and how hard it was for them to reconcile their conduct with any known and acknowledged principle. It is however partially explained by a little circumstance, to be remembered not only as affording the key to this mystery; but also as indicating a division between the allies, and the disposition of the British government to return to a wise and more liberal policy. When Napoleon, by his return from Elba, had deranged the views of the coalition for the pacification of Europe, the powers assembled at Vienna declared him an outlaw, and announced their determination to maintain the treaty of Paris, and to guard against every attempt to replunge the world into the disorders of revolution. Twelve days subsequent to this declaration, viz. 25th of March, 1815, the ministers of Great Britain and the monarchs of Austria, Russia, and Prussia, entered into a new treaty, 'to apply to the invasion of France the principles of the treaty of Chaumont, to preserve the order of things so happily established in Europe, to maintain the treaty of Paris, and the stipulations determined and signed at the congress at Vienna.' They consequently agreed not to lay down their arms, until Napoleon should have been rendered absolutely incapable to create disturbances, and to renew his attempts for possessing himself of the supreme power in France. In the last article, his Most Christian Majesty was invited to accede to the treaty, and to make known what assistance circumstances would permit him to give in furtherance of its objects. Whether it was that the British court was apprehensive, from the unanimity and exulting gladness with which Napoleon was received by the French nation, that the war would be interminable; or that the house of Brunswick at last saw that it was about condemning the title by which it held the British crown, we are unable

to decide. It however took a distinction, which would have enabled it either to conclude peace without inconsistency, or to defend its title to the throne of Great Britain without being embarrassed by its own acts. In exchanging the ratifications, the British minister declared that 'the article inviting his Most Christian Majesty to accede to the treaty,' was not to be considered as binding his Britannic majesty to prosecute the war with a view of imposing upon France any particular government. 'However solicitous,' the declaration went on to say, 'he might be to see his Most Christian Majesty restored, and to contribute with his allies to so auspicious an event, he deems himself called upon to make this declaration, in consideration of what is due to his Most Christian Majesty's interest in France, and in conformity to the principles from which the British court has invariably acted.' To this explanation, the Austrian ambassador assented as expressing the sentiments of his master, probably thinking a slight contradiction between professions and actions, to be preferred to a difference with Great Britain, the purse-bearer of the alliance. While the representatives of the allied powers were acting this farce at Vienna, the duke of Wellington, the commander of their armies, was marching upon the French frontiers, and in a simultaneous proclamation to the French people, manifested the hollowness and hypocrisy of their professions. In that manifesto he declared, and the expressions are worthy of remark, 'that henceforth Europe, united and moved by the same interest, must form but one power, and the sovereigns a supreme corporation, upon which will be raised the solid pedestal of the peace and happiness of nations. The rights of the monarchy will attain all from this august senate and be confirmed in its solemn acts. The name of Louis XVIII, is inscribed in this federal compact. The allied sovereigns placed him on the throne of his ancestors, and proclaimed the reign of the Bourbon family, until its extinction, over the French people. *They now take up arms to restore and confirm* that dynasty, to support the cause of kings, to consolidate the government, to secure the repose of mankind, and to give an imposing example of sovereign authority to all mankind.' The same sentiments were reiterated in the proclamations, dated March 18th, and April 8th, 1815, signed by all the powers at Vienna. In these public papers, the mask of respect assumed by them, for the independence of France, is

thrown off. They avow that the violation of the capitulation of Paris was their own act, and not that of the adherents of the Bourbons, and they declare their determination, again to disregard their guarantee, while they insist on the compliance of the French nation with its part of the treaty.

The battle of Waterloo decided the contest in their favor. The Bourbons were again restored, and with more marks of violence and conquest than before. The allies avoided giving any pledge to observe the rights of the nation, and the legislature adjourned, after protesting that they yielded to superior force, and that the independence of the country was violated. As if there were not sufficient marks of their utter disregard of their pledged faith, and of the explanation given at the exchange of the ratifications of the treaty of March 25th, 1815, the allies entered into a new treaty at Paris, Nov. 20th, 1815, in which they agreed 'for the purpose of *maintaining inviolate the royal authority*,' to station 150,000 troops on the frontiers, and within the fortresses of France, for the space of five years; unless 'the allied sovereigns, at the end of three years, should, in concert with his Most Christian Majesty, agree to acknowledge, that the motives which led to that measure had ceased to exist.' In this military occupation of France, the revolution ended. The popular party was overcome by an overwhelming force, and Louis le Desiré was placed upon the throne of his ancestors, and there maintained, by the armed legions of the alliance. To this moment, however, a pretence of public good was held out as the motive to their conduct. Whatever may have been their real intention, as to the conclusion to be drawn from the restoration of hereditary monarchy in France, the act is glossed over with fair professions of zeal for the welfare of mankind, and of the necessity of suppressing principles dangerous to the existence of social order, and afterwards of the necessity of disarming an individual, whose ambition and genius rendered his possession of power fatal to the repose of Europe. These principles, though perhaps their applicability depended upon the unnatural and unsound structure of society in the old world, still were not easily controverted by statesmen living in that society, and defending the permanency of the ancient establishments. Although the abuses of the feudal system, and the disproportionate privileges of the nobility in the continental monarchies, afforded materi-

als for the contagion of revolutionary principles; or even for the military conquests of Bonaparte, directed by his genius, and maintained by a system better adapted to the wants and nature of modern society; still to these courts struggling for existence itself, the revolutionary excitement in France, or the continuance of Napoleon at the head of his empire, seemed more than a pretence for their interference in the domestic affairs of that kingdom. The extent and immediateness of the danger prevented men from putting to the test the correctness of the principles which governed their conduct. But when Napoleon was imprisoned in St Helena, and Louis was securely seated on the throne of his ancestors; and particularly when, in 1818, the allied powers at Aix-la-Chapelle declared that 'they recognised with satisfaction the order of things happily established in France by the restoration,' this pretence no longer existed, and the general rule, that any interference with the internal government of a country is an attack upon its independence and a violation of the laws of nations, assumed its original force. The grounds upon which the exceptions had been justified were annihilated, and the ordinary maxims of national jurisprudence were restored to their usual active operation. Such, however, was not the intention of the members of the holy alliance. They had seen the extension of liberal principles; they had witnessed the progress of intelligence in modern Europe, and they feared its operation upon their subjects. They knew that an augmented activity in the public mind would cause the overthrow of the political institutions of their own kingdoms, as it had done those of France, and in their several assemblages they adopted and matured measures to arrest the march of political innovation. It is impossible to doubt this, when we look at the simultaneous acts of the allied monarchs to promote that object, and advert to the fact that these were adopted shortly after a general congress had been held. Upon the return of his Prussian majesty from Paris, namely, on the 3d of January, 1816, a decree was published, suppressing certain political journals and restricting the liberty of the press. The sacred alliance was acceded to by the king of the Netherlands, June 21st, 1816, and in the month of September following, a law was proposed by the king to the legislature and approved by that body, prohibiting any discussion upon the nature or character of any foreign govern-

ment. In France, the press was already under the inspection of the police, but in 1817 a law was passed imposing upon it further restrictions, and on the 30th of December, in that year, all political journals were suppressed by law until the end of the legislative session in 1818. These measures not only evince the hostility of the members of the alliance to a free press, that great engine of political reformation, but a settled and concerted plan to suppress all attempts at innovation by their joint efforts. They had experienced the advantages of acting in concert against their disaffected subjects, and at Aix-la-Chapelle an agreement was formed, to which France acceded upon the invitation of the original parties. By this agreement, Austria, Great Britain, France, Russia, and Prussia, 'after having investigated the conservative principle of the great interests, *which constitute the order of things* established in Europe by the treaty of Paris of May 30th, 1814, the recess of Vienna, and the treaty of peace of 1815,' declared, 1st, that they would preserve the principles of intimate union, which had hitherto decided with respect to all their common interests and relations, &c. 2. That their union should have for its object only the maintenance of general peace in conformity with those treaties. 3. That France, associated with the other powers by the restoration of legitimate monarchy, engaged to concur in the maintenance and consolidation of a system which has given peace to Europe and assured its duration. 4. For the purpose of attaining that object, future meetings of the allied powers were provided for, to which the contracting powers were to be invited; but if the affairs of any other state were to be brought before the meeting, that power should be invited to attend and participate in the debates relating thereto.

This combination of monarchs at this time began to assume the form it was originally intended to take; but which circumstances had until then rendered unnecessary. It was to be continued upon a new principle. Not as before, to suppress any particular danger, or to oppose any particular government, but to guard against indefinite dangers which might exist,—to act as a sort of precautionary, supervising police.

We might here condemn this measure as creating an unprecedented tribunal, without any apparent or real necessity; inasmuch as the allied powers did not intimate that any existed,

or that any new revolutions were to be apprehended. But this would be shutting our eyes to the evidence before us. Revolutions were to be expected; but the allied monarchs could not allude to their apprehensions, without exposing the causes of the universal desire of change. If they had said that the alliance was formed against the revolutionary spirit of their own subjects, the inquiry would have presented itself, 'What is the cause of this spirit?' and the public mind would have reverted to the arbitrary laws and despotic systems of government in their several kingdoms; the promises of those monarchs to reform their political constitutions, and the violation of those promises, when the danger which had extorted them had passed away. They therefore resorted to a new combination, under the pretence of subserving the interests of religion and morality; but, in reality, to guard against the reformation of their governments, and, if possible, by united and simultaneous efforts to stay the progress of improvement. To further this great object, shortly after the dissolution of the congress at Aix-la-Chapelle, laws were adopted in several of the continental kingdoms, having in view a still greater restriction upon the liberty of the press. On the 14th of October, 1819, a decree was issued establishing a literary censorship for the kingdom of Hanover. On the 18th of the same month, his Prussian majesty promulgated a decree to the same effect, and at the same time the German confederation passed a law, by which all periodical publications were subjected to a previous censorship. Other restrictions upon the press were imposed, the universities within the confederation were put under supervision, and professors who did not teach political doctrines suitable to the views of the aristocratic party, were to be dismissed from employment. The Prussian court adopted the same principles in a circular to the foreign agents of that kingdom, and the object of this supervision was in that paper said to be, 'to prevent young men from preparing for a life at once learned and active,—from becoming what they ought not to be.' This was, in other words, expressing the fear of that party, of the operation of intelligence upon the minds of those, who, by their activity, obtain influence in society. To cooperate with those decrees, a central committee was appointed to meet at Mentz, to inquire into all revolutionary movements or associations. The same year the French

government adopted some new regulations respecting the press, which, in 1820, were so modified, that the editors of the liberal journals retired from the exercise of their duties, declaring that under those laws their labors could be of no service to the public. In Poland, nothwithstanding the constitution guarantied the liberty of the press; every publication, whether periodical or not, was subjected to the inspection of a royal censor, by an ordinance of the Russian emperor, of July 16th, 1819. These simultaneous acts, all tending to the same object, prove them to have been the result of a well digested and unanimous resolution. They shew the efforts of the allied monarchs to have been directed to the achievement of one great end, namely, to extinguish the desire of innovation, perpetuate the old system of arbitrary government, inthrall the human intellect, and chain its freeborn spirit to the footstool of legitimate monarchy. But while their attention was occupied in those kingdoms wherein they suspected revolutionary principles to be most prevalent, the reaction upon their system commenced in the south of Europe, and they found new difficulties springing up at the very moment when they had supposed their end to have been accomplished. In the beginning of 1820, the troops that were assembled at Cadiz for the invasion of South America, being badly fed and clothed, and worse paid, revolted, and declared that they would not embark, and also that their arrearages should be paid. The people immediately took advantage of this disaffection among the military, and simultaneously throughout Spain proclaimed the constitution of 1812, which, on the 6th of March next following, the king, being without support, found himself obliged to accept. How this constitution was formed, and how it was overturned upon the return of Ferdinand from France, will be mentioned in another part of these remarks. At present we must confine ourselves to the relation of events. On the 1st of July the Neapolitan army followed the example of the Spanish troops, and proclaimed the Spanish constitution of 1812; Naples having been formerly united to the same kingdom. On the 6th of July Ferdinand, the old king of Naples, abdicated, and his son Francis, who succeeded him, assented to the constitution, saving what modifications a national representation constitutionally convoked might propose. On the 20th of August a similar revolution took place in Portugal. A

constitution was to be formed by the cortez, and the king was proclaimed as the constitutional monarch. These events soon attracted the attention of the self-constituted guardians of Europe. But instead of concluding from this general dissatisfaction evinced towards existing governments, that there was something faulty in their constitutions, or that they were unsuitable to modern societies, they determined to afford them their most efficient support. A forcible opposition was therefore organized to these reformed governments, not because they threatened the political existence of the neighboring kingdoms, or by their excesses disgraced the cause of freedom, but because the established order of things was invaded; or as it was declared in the Laybach circular, subsequent to the Neapolitan war, 'because every change, which does not solely emanate from the free will—the reflecting and enlightened impulse of those, whom God has rendered responsible for power, leads to disorders more insupportable, than those which it pretends to cure.' The emperor of Austria, being special guardian of Italy according to the new system, took measures to summon the allied monarchs to a congress, and in the month of October 1820, they met at Troppau. On the 28th of December, they issued a circular in which they declared that 'the principles which united the great powers of the continent to deliver the world from the military despotism of an individual issuing from the revolution, ought to act against the revolutionary power which has just developed itself. Without doubt,' it continued, 'the powers have the right to take, in common, general measures of precaution against those states, whose reforms engendered by rebellion are opposed to legitimate government. In consequence the monarchs assembled at Troppau have arranged together the measures required by circumstances, and have communicated to the British and French courts their intention of attaining the end desired by mediation or force.' Lord Castlereagh (and certainly he was not a statesman to be shocked at any slight infringement of popular doctrines) was unable to assent to the principle asserted in this circular. On the 19th of January, 1821, the British court issued its protest against any such interpretation being put upon the general treaties, to which the allies had referred as sanctioning that principle. This protest contained the following sentence, which not only more strongly marked the dif-

ference first manifested at the ratification of the treaty of Vienna, but pointed out the cause of that difference. 'The British court regard all interference with the internal concerns of a foreign government, as an exception to principles of great value and importance, and never to be so far reduced to rule as to be incorporated in the law of nations.' This single sentence shewed a radical difference between the policy of the court of St James and that of the Holy Alliance. While, however, it refused to join in the crusade against Naples; it fully admitted that Austria and her associates might engage in it with a view to their own security. The protest, though asserting an established principle with manly force, closed with certain professions as to the pure intentions of the allies and of their right to interfere, provided the internal commotions of Naples threatened the tranquillity of their dominions, which could not be regarded otherwise, than as an implied approbation of their conduct towards Italy. The Austrian troops were consequently put in motion, and in one short campaign annihilated the popular party in Italy. As if, however, fate had determined that the deceitful professions of the combined despots for the independence of other powers should be exposed, and their true designs fully developed, it so happened that in the midst of the Neapolitan war, a revolution broke out in Piedmont, against which the Austrian forces were immediately directed, as if they had been the ordinary police of Italy, and this a common breach of the peace. No consultation was had with regard to this revolution; no invitation was given to the government of that kingdom, in conformity with the fourth article of the Protocol of Aix-la-Chapelle; nor was there any delay to ascertain if the domestic disturbances were likely to extend to other countries; but the Piedmontese territories were immediately invaded and the new government overthrown, by the unsolicited interference of the foreign allies of its sovereign. With the suppression of the revolutionary spirit in Italy, they appeared to be then satisfied; but in the Laybach circular, in which they justified their conduct, and appointed a time for another congress to assemble, the same alarming principles of interference with the internal concerns of other countries, are reiterated and maintained as incorporated in the public law of Europe, and the allies declare that 'they will regard as null and contrary to the law of na-

tions, all pretended reform effected by revolt and open force.' Though this declaration might well be considered as a direct attack upon the Spanish and Portuguese revolutions, and indicative of more energetic measures to be pursued at some subsequent period, still, as no immediate steps were publicly taken by the high powers to carry their resolutions into effect, it was generally supposed that Spain and Portugal would be protected from such unauthorized interference, if not by the law of nations, at least by the dread of their power. The great monarchies of Europe were not to be treated in the same unceremonious manner as the petty states of Italy. In the case of Spain, too, there were some peculiar circumstances, which strengthened her claim to exemption from the special superintendance of the allies. By their peculiar religious and national prejudices, and by their almost insular situation, the Spanish people had been in a great degree separated from a considerable part of the European family. Their spirit of national independence had often rendered them invincible, and history afforded the holy alliance some striking lessons on the danger of invading a gallant and haughty people, in a mountainous country. For three hundred years that nation resisted the gigantic power of Rome. The Saracen hordes, that overran the country, could not subdue it. Though outnumbered, the Spaniards resisted, and after the lapse of centuries drove the Moors back to their own country, and the

> 'Castilian mould,
> Incapable of stain, at last expelled
> Her mischief and purged off the baser fire
> Victorious.'

It was in the Peninsula too, that the first effectual resistance had been made to the power of Napoleon. The rest of Europe had submitted after a long struggle to his authority and acquiesced in his continental system. The old king of Spain acted but as his deputy. By his orders the best portion of the Spanish army had been transported to the Danish islands in the Baltic, and the French troops had been admitted into and occupied some of the most important cities of the kingdom. Charles IV, (whose abdication, it should be recollected, though caused by a revolt of his subjects, was sanctioned by the congress of Vienna,) and Ferdinand, his son, who was in possession of the crown, had agreed to

submit their disputes to the decision of the French emperor, and had placed their persons and their courts in his power. While in France, Ferdinand was induced to abdicate, possibly by motives similar to those of his father, and after his abdication he sanctioned the transfer by Charles of the Spanish crown to Bonaparte. Here then was a full and entire release of his subjects from their allegiance. If papers, and charters, and releases, are to be substituted in the place of principle, that release would have acquitted the people of Spain, even if they had adopted Joseph for their sovereign. Charles IV, influenced by personal fears of the violence of his subjects, then in open revolt against their monarch, had abdicated in favor of his son. This abdication he disowned, when those fears were removed, and transferred all his royal rights, and those of his family, to the French emperor. To this transfer Ferdinand assented. Whether this assent was extorted or voluntary is unimportant, inasmuch as his father being restored to the exercise of his free will, and no longer influenced by the terrors of a tumultuous crowd, had voluntarily abdicated in favor of Napoleon; and if the people of Spain had not denied the right of their king to alter the constitution, the transfer would have been executed. Ferdinand and his court were without energy, and had submitted to fate; and the Bourbon dynasty would have been at an end in Spain, and possibly in Europe, if the Spanish people had not taken the management of their public affairs into their own hands. Unsupported by allies; without arms, money, or leaders; in presence of the French legions, who occupied the best part of the kingdom, and in defiance of the might of the most powerful monarch that ever swayed a sceptre; the Spanish nation resolved to vindicate its independence, and the title of the heir to the crown, or as it was expressed, in contempt of the doctrines of the holy alliance, the right of Ferdinand to succeed, in the life time of his father, to the crown, to which he was called by the voice of the nation. The indignation of the whole body of the people was sufficient to animate them to endure the first brunt of Napoleon's power; but to excite and support their courage during a long and bloody struggle, with so powerful a foe, it was necessary to present some other motive besides the wrongs of Ferdinand. The insult to the national honor, though keenly felt and warmly resented, would in time have been forgotten. Men will not wage an eternal war for a point of honor, and it

was feared, that the people would soon see that it was only a change of masters, and that their old dynasty did not deserve so great a sacrifice as they were about to make for it. Besides, by the abolition of the inquisition, the sequestration of its property, the diminution of the number of monks and monasteries, the establishment of a national judiciary in the place of the seignorial courts, and by the reformation of the financial system, the new dynasty was conferring benefits upon the nation that would have soon wiped away the odium of its usurpation. The successes of the French, and the distress and want of union among the Spaniards, were not without effect; and the patriot cause would probably have failed, if, for the purpose of uniting the nation, enlisting all on the side of its independence, and giving to the people some motive to resist, at the suggestion of the Marquis of Wellesley, the Spanish junta, (which had assumed the executive functions,) had not authorized the meeting of the cortes for the purpose of giving a better government to the kingdom.

This body was well known to the Spanish nation as its supreme and extraordinary legislature. Under the different names of *concilium*, used by Gothic legislature; of *curia*, the term by which it was known during the twelfth century; and of *cortes*, first assumed under Ferdinand the third, it had been a constituent part of the government ever since the fall of the Roman empire. Laws were usually passed in the king's council; but the cortes was entitled to be called together and consulted on all extraordinary occasions; and if any could ever be deserving of that epithet, it was when the royal family was treacherously withdrawn from the kingdom, the soil invaded, and the people looking for leaders to direct their efforts against those who sought to subvert their independence by fraud and violence. The powers of this body, and the mode of calling it together are not well defined; but sufficiently so to show, that it had not exceeded its authority in framing the constitution. Like all the European constitutions, the Spanish was a collection of precedents from the history of the nation. The king and the legislative body claimed to do whatever had been done before by any of their predecessors; and enough of contradictory precedents might have been found during the past ages of violence and ignorance, to authorize almost any exercise of power, by either branch of the government. The cortes, however, was entitled to very great

authority from the earliest history of Spain. It had often sat in judgment upon the sovereigns of the nation. Ramiro III, queen Urraca, and Henry IV, were severally deposed by this body, and when the Pope sent his legate to restore the last named monarch to his throne, one of the nobles in the true spirit of Castilian freedom, told him in full assembly, that 'he and the nobility of the realm would depose a king on just causes, and set up such as they thought suited to the public good.' It also held the public purse, until the discovery of America gave other means to the king, by which he was enabled to dispense with the cortes. A body possessing such transcendent powers, in such an emergency had an undoubted right to alter the constitution. No royal consent or formal charter could make such an alteration more binding. To say nothing of the inherent right of the people to consult their own safety, the most obvious rules of European politics justified, and the laws of necessity commanded, that course. No objection could be made to the manner in which the cortes was assembled, as Ferdinand had by a decree of May 5th, 1808, authorized any council or audience at liberty to summon the cortes. In 1810 the members met in the Isle de Leon, and after much unnecessary debate formed the constitution of 1812. It was popular, and did in fact redress many of the grievances which had weighed so long and heavily upon the Spanish nation. With the hope of obtaining something like the common privileges of men, and a melioration of their political condition as held out to them by the cortes, this gallant people, with British aid, resisted the power of Napoleon, until, by his reverses in the North of Europe, he was compelled to withdraw his troops from Spain, to release Ferdinand, and restore him to his devoted subjects.

With the government thus formed, Great Britain and Russia did not think it unlawful to enter into an alliance; England, at the commencement of the Spanish war, and Alexander when Napoleon had invaded his territories and threatened his subjugation. At this juncture no doubts were entertained by the Russian court of the legitimate formation of the government, or of its power to do all the acts of a sovereign authority. It had declared war, formed alliances, altered the constitution, and meliorated the social condition of the common people, in order to secure their affections, and to confirm and

animate them in their resistance to their invaders; and while these things were done to resist the power of revolutionary France, no objection was made to their right so to do. But when Ferdinand had recovered his freedom, and was restored to his hereditary crown, which had been preserved to him only by the energy of the Spanish liberals, and the courage of the populace, (for the Spanish courtiers succumbed to the French,) the scene was changed, and principles operated in another manner. The constitution had been adopted in the absence of the king, and of course (according to the doctrine of the holy alliance) without any legitimate authority, and it depended upon him, when he resumed the reins of government, to sanction or disallow it. His intentions on that subject were not long doubtful. After leaving Paris, Ferdinand, carefully avoiding the Atlantic frontier of Spain where the English troops were stationed, took a circuitous route for Valencia, where he staid nearly a month, probably arranging measures with his monarchical allies. On the 4th of May, directly after the departure of Bonaparte for Elba, and simultaneously with the rejection of the constitution of France by Louis, Ferdinand, with the concurrence of his courtiers, and supported by a powerful army, issued a proclamation annulling the constitution, dissolving the cortes, and proscribing that party, by which the privileges of his family and the national independence had been so nobly vindicated. It is a fact worthy of note, as indicating the interest which the Bourbon family in France took in the destruction of the popular party in Spain, that during this interval of suspense, the French journals were filled with paragraphs abusing the leaders of that party, and intimating that they had determined to rebel against the king. After this explicit declaration, Ferdinand proceeded with great vigor in the royal regeneration of his kingdom. His first care was to regulate the press, which was done by an edict of the 12th of the same month. The editors of the *Redactor*, and the *Conciso*, who had with the greatest energy maintained the cause of their country against Napoleon, were arrested and subsequently sentenced to the gallies for ten years. The church property was restored. The inquisition was reestablished, and united more strongly to the crown. The seignorial courts were reorganized. The council of the Mesta was reinvested with the power of ordering the merino flocks to traverse

the kingdom, to the great detriment of the agricultural part of the community; and all the odious abuses of the ancient government were reestablished in their former vigor. The principal members of the cortes, the patriot generals and their supporters were thrown into prison, to the number of more than four thousand, and the gallies, castles, and dungeons, the garrotte and inquisition, were all put in requisition to punish those, who had been so audacious as to assert the independence of Spain for the sake of the nation, and not for the sake of the king alone. To such an extent was this system of proscription carried, that the prisons, not being sufficient to contain the victims of royal vengeance, a Franciscan convent was converted into a state prison, and many persons sought refuge in other countries.

This persecution was not quietly submitted to. After the return of Ferdinand, scarcely a year passed without some serious rebellion. Although the joy, felt in the national triumph over the French, and in his rescue and restoration, afforded him the best foundation for great personal popularity, so disgusted were his subjects at his ingratitude and tyranny, that within four months after his return, the provinces of Navarre and Andalusia were the seats of revolt; and to prevent the extension of disaffection, the government were compelled to send troops into the provinces of Estremadura, Arragon, Castile, Catalonia, and Valencia, and permanent councils of war were established in each province for the immediate trial and execution of persons arrested. The subsequent insurrections of Mina, Porlier, Lacy; those at Barcelona, Valencia, Cadiz; the partial commotions in other parts of the kingdom; and the general insubordination, all indicated a settled and permanent dislike to the anti-constitutional measures of Ferdinand, by no means inferior to that first excited. Whilst this dissatisfaction was increasing, the government was losing its official and natural strength, by an imbecility and mismanagement on the part of its ministers, only to be equalled by the ingratitude and tyranny of its head. The navy dwindled to a shadow, the army badly fed, paid, and clothed, and the finances in such a state of disorder as to be inadequate to defray the ordinary expenses of the municipal department, all showed the royal government to be hastily tending to dissolution.

Such was the state of affairs in 1820, when the constitution

of 1812 was reestablished, that constitution which had been formed to remedy the most deplorable condition to which a civilized country had ever been reduced. From being the most powerful kingdom in Europe, Spain had become the weakest. With a fertile soil and delicious climate, it was the abode of famine. With the mines of Mexico and Peru at its disposal, it was poor; and it possessed the monopoly of the most fertile and largest colonies in the world, without having either commerce or manufactures. Its rulers seemed to study political economy only to contradict its precepts by their practice, and the efforts of government were solely directed to brutalize the intellect and paralyze the energies of its subjects, and to impoverish and depopulate the country. Neither did the honor of Spain receive more efficient protection from its proper guardians, than its political prosperity. While the other monarchs of the continent were the helpless victims, or reluctant instruments of Napoleon, Charles IV. became his willing agent. The soldiers, navy, and wealth of the kingdom were employed in increasing the preponderance of an already too powerful neighbor. The strongest frontier of Europe was passed, and the impregnable fortresses of Spain were surrendered without resistance; and the whole court, the old king and new, the weak father and usurping son, with their attending nobles, from a state of freedom, and while their fertile colonies offered them an ample empire and a secure asylum, went to Bayonne to place their persons and fortunes in the power of the French emperor, with the same weakness and irresolution, with which the inferior animals yield to the fascination of a rattlesnake. Was there not, in this state of things, a sufficient justification of a new organization of the government? Even if the royal family had been on the throne, a revolution would have been justified by the destruction which threatened the nation from the maladministration of the government. But in its captivity the circumstances altogether form a defence of the conduct of the cortes and nation, in the adoption of the constitution, that places it beyond the reach of censure or doubt. To deny this proposition would be to contend, that the nation was bound to acquiesce in its own destruction; unless the king was in a state to command it to act with a view to its safety. The whole theory of government would be overturned, and its great object, the welfare of the subjects sacrificed for the benefit of the rulers.

Such in truth is the essence of the principles of the holy alliance. Government is by its leaders considered as established for the benefit of the privileged orders, and the people are never to be mentioned, except when it is necessary to invent an excuse for some new encroachment upon their rights, or some violation of public law. Thus, under the pretence of guarding them from themselves, they are to be debarred from all interference in their government, and all reform proceeding from a popular quarter is to be opposed and crushed by foreign powers, lest the happiness of the subjects should be disturbed by revolutionary excitement. Any revolution to extend the royal prerogative may be tolerated, but one having popular rights for its object is illegal. In what, excepting in the party to be benefited by the change, did the overthrow of the constitution in 1814, differ from its reestablishment in 1820? The army, in both instances, was the immediate instrument. Then, we ask, had Ferdinand upon his return from a captivity, from which he had been redeemed by the valor and perseverance of his subjects, a greater right to overthrow a constitution with which they were satisfied, than they had to reestablish it, when that was the only way to the regeneration of their sinking government? What gave him the right to disapprove of that constitution? He had it not as heir apparent to the crown. The heir only succeeds to the right of his ancestor, and Charles then living as monarch of Spain could *grant*, according to the principles of the legitimate party, a charter to his subjects; a charter, too, not to be violated by his successors. During the life of Charles, therefore, the disapprobation of his son could not annul the constitution.

But it may be said, Ferdinand was king of Spain by virtue of his father's abdication. This abdication however was caused by a popular commotion and it was void, according to the doctrines of the holy alliance, as the abdications of the kings of Naples and Sardinia had also been considered. The people in 1808, finding the public affairs mismanaged, through the fondness of the old king for Godoy, rose tumultuously, and, to prevent them from proceeding to extremities, Charles abdicated in favor of his son. This change in the government was sanctioned by the congress of Vienna, and the continuance of Ferdinand on the throne was 'constituted part of the order of things' at the general pacification. Ferdinand there-

fore owed his throne first to the will of his subjects, and subsequently to their courage; and it must be granted that the power which first gave to him his political authority, might, under like circumstances, either wholly deprive him of it, or so limit it, as to promote the public welfare. Besides, the great justifiable causes of a revolution still existed. The situation of Spain in 1820, was, if possible, more deplorable than in 1808. The public and private distress was greater. The colonies which, at the time of his accession, were attached to the mother country, were forever separated, and the resources and armies of the kingdom were squandered in ill directed attempts to reduce them to submission. The navy was no more; the finances were in the greatest confusion, and with all these causes of complaint, the people were goaded to desperation by the tyranny of the inquisition and the government, and their indignation was roused by the unmerited persecution of the most distinguished leaders and gallant generals of the patriot party. If then the revolution which placed Ferdinand on the throne was not contrary to the public law of Europe, much less was that of 1820, which limited his authority and directed its exercise to the promotion of the public prosperity. It was to restore a constitution lawfully established and generally acknowledged; but which had been overthrown by the illegal violence of the military and of their ungrateful sovereign. We have been thus particular in the history of the Spanish revolution, that our readers might fully understand the grounds upon which the contest rests, and that it is for no other object than to strengthen the arbitrary party. The indefeasible right of the monarchical part of the government is no more sacred in the eyes of the alliance, than any other principle, except as it contributes to effect this great object of their combination. Those kings who had not entered into their designs, were treated with as little ceremony as the popular party. If the royal right be indefeasible, it is equally so to a part of the kingdom as to the whole. Yet Norway was wrested from the king of Denmark by the allies, in violation of that right, and part of Saxony shared the same fate. These facts prove that their peculiar regard for the monarchical principles was only a pretence; but the Spanish revolution was a peculiar and striking instance, which at once illustrated the nature and extent of their designs. With that revolution the alliance finally deter-

mined to interfere, and France was deputed to restore the ancient order of things, inquisition and all. This appears by the St Petersburg Imperial Gazette of June 12, 1823, where in one of the half official papers of the Russian court, it is asserted, that France acts in behalf of the alliance, by the invitation of that body, as Austria did against the Neapolitan and Piedmontese revolutions; and the inquisition is spoken of as one of the pillars of the Spanish monarchy. In justification of this attack upon the independence of a powerful kingdom, it was not even pretended, that the Spanish revolution had been attended with those massacres, which roused the indignation of mankind against the Jacobins of France; and the charge that the Spanish liberals were instrumental in exciting commotions in that country, has been so fully disproved in a late number of the Edinburgh Review, and was so faintly urged and at such a period of the negotiation with the Spanish government, that it can only be classed with those pretences, with which the members of this alliance have so often sought to disguise the real motives of their measures. But in this age such reasons can neither justify those who allege them, nor deceive the world. The British court has become convinced of the unhallowed designs of its allies, and in the late diplomatic correspondence at Verona has manifested its determination not to sanction their proceedings. All enlightened and unprejudiced men seem to be now satisfied by the manifestoes delivered to the Spanish Court by the ministers of the allied powers, and by a thousand other simultaneous and kindred acts in other parts of Europe and towards other nations; that a combination has been formed by the three Northern courts, aided by the Bourbon parties in France and Spain, to preserve by force the ancient order of things from reformation; and by subjecting the press to the authority of government, by supervising the universities, by the exile and proscription of the friends of liberal principles whenever they appear, by the reestablishment of the inquisition in Spain, the erection of a central commission in Germany, and augmenting the strength of the police in other countries, to extirpate the apparent causes of all revolutionary excitement; or in other words, to poison, at the fountain head, the streams of political intelligence and improvement.

This is the unholy enterprize in which these statesmen have

embarked. From their elevated stations they have foreseen the dangers which threaten their authority; and instead of yielding to the manifest will of society, they have arrayed themselves in opposition to it. The spirits of tyranny and bigotry have been awakened by the events of the last thirty years and are rallying all their forces in support of the ancient establishments of Europe. A numerous and powerful party answers to the summons. It has possession of the armies, the police, and the finances of the continent; but it is opposed by what ever has been and ever will be irresistible,—the spirit of the age. The increase of knowledge is constantly impairing the strength of this party, and augmenting that of the popular party. The abuse of their authority has rendered the mass of the community hostile to its leaders. Great Britain has deserted them, and they must fail in their attempts. Spain may be conquered by her own divisions and by the armies of France, (though we trust a different fate awaits that kingdom)—the noble and generous patriots of humanity may be more than once defeated and trampled down by the legions of the combined despots; but the great cause of freedom will go on, gaining strength and diffusing happiness, until its triumph shall be consummated in the general melioration of the political institutions of the old world. Its martyrs leave examples of more efficacy than all their exertions while living, to animate and encourage their associates. The generous blood of those heroic men, who testify their devotion to the cause of mankind upon the scaffold or in the field, does not sink into the ground, as water spilt in the desert; but fertilizes and invigorates the soil of freedom, and in due season, like the teeth of the Bœotian Dragon, will spring up in a harvest of armed men. The infant minds of the active and enthusiastic, who, by their inborn talent and courage, are destined to lead their contemporaries, the nobility of God's creation, are deeply impressed with the great example, and thirst to imitate it; and whilst the institutions of society press so harshly upon the manners of the age, and militate so strongly against the most valued principles, they never will be without a motive to action. All the improvements of modern times; the manufacturing, mechanical, and scientific arts; the literary institutions; the interests of commerce; and, more than all, the free institutions of this republic, are indirectly opposed, and are constantly raising up enemies to the aristocratic party.

They must ultimately effect its downfall. It has entered into a contest in which it cannot be successful, until those causes, which contribute to the continuance of society, shall have ceased to operate. The manners, feelings, and opinions of living men must be totally changed; a new inheritance of thought must be bequeathed to their descendants; commerce, literature, and the chief productive arts must be destroyed; the tide of improvement must flow back, and then, but not before, can the doctrines of the holy alliance be reestablished in their primitive security.

In the contest between a party thus destined to prevail and another so determined to resist, in which the very foundations of civilized society must be shaken, it is not impossible that much may take place, which the friends of liberal principles cannot approve. The passions of the multitude, never under the strictest subjection, when emancipated from the severe bonds of despotic government, may lead them into excesses, that will cast a stain upon the popular cause. We hope that this may not be the case; but if it should, to whom ought those excesses to be attributed? Not to the friends of freedom, notwithstanding their followers may be the immediate actors. The efficient cause often lies beyond the apparent agent. Subjects have rights and feelings as well as their rulers. Their passions are excited at any violation of these rights, and their indignation and anger become uncontrollable. When their attention is once attracted to their political interests, and the subtlety, hypocrisy, and injustice of the privileged orders, and their open and secret opposition to any political reform, are made manifest to their understandings; it is folly then to charge upon the lower classes, the guilt of those atrocities which may be committed in a contest between them and the supporters of the ancient order of things, brought on by the opposition of the latter to a reformation, that was called for by the exigencies of society. The consequences to which we allude are the necessary result of such conduct in such a state of society. The operation of circumstances and principles upon men in the mass, may be foretold with as much certainty, as any of the phenomena of the natural world; and if kings and their ministers, with all the lights which are afforded to them by their high stations, will oppose the spirit of the age, their destruction is upon their own heads, as much as if

they had placed themselves in the channel of a torrent, when they heard the storm gathering in the mountains.

It cannot be expected, that a contest involving such important principles, portending such momentous results, affecting so many interests and upon so extensive a theatre, should pass by, without affecting us in a national point of view. The exercise of belligerent rights upon our extended commerce must present many causes of offence. Besides, the nature of the contest is such as almost necessarily to involve us in disputes with one of the great contending parties. If success should favor the allied monarchs, would they be satisfied with reforming the government of Spain? Would not the Spanish colonies, as part of the same empire, then demand their parental attention? And might not the United States be next considered as deserving their kind guardianship? Would this government be likely to receive more indulgence than that of Spain? Its example does infinitely more hurt to the cause of despotism than ten Spanish revolutions. Its very existence is an attack upon the monarchies of Europe; its economy is a reproach upon their wild extravagance; and its policy condemns their ambition, their unnecessary wars, and their whole political system. In this contest, though not an active, this republic is their most efficient enemy. She appeals to the feelings and interests of men, and creates allies and enlists armies in the camps of her antagonists. The wishes of our citizens, too, are all on the side of the liberal party. These circumstances, connected with the jealousy with which our republican institutions are viewed by the European courts, may produce a state of feeling, that will not improbably result in direct hostility, and it is not impossible that the extravagant pretensions of the Russian Emperor in the Pacific, are only the first steps to a series of usurpations, which we cannot resist without war, nor submit to without dishonor.

Neither is it by the active interference of the allied courts alone, that our pacific relations may be disturbed. Our institutions, feelings, and domestic policy, indeed, place us in opposition to them; but our foreign policy is equally opposed to the commercial systems of the governments advocating liberal political principles. The national policy of the United States is founded upon two great maxims, just and equal laws at home, and reciprocal commerce with foreign nations. The history

of the country, our wars, treaties, negotiations, and our statutes, fully illustrate this proposition. This commercial system is directly opposite to that, which has always governed the great powers in opposition to the alliance. Spain, when in possession of her South American colonies, scrupulously debarred all intercourse with those fertile countries. If by this revolution she should attain any great physical force, whatever party may rule over the kingdom, it is not probable that the government will acquiesce in their total separation, without making some final and vigorous efforts for their subjection. Whether she should attempt this unaided by her allies, or with the assistance of the holy alliance in case of the success of the despotic party, or of Great Britain, provided the latter should, by the length of the contest and the violence of the alliance, be compelled to side with Spain, is immaterial. In either event it will present a fruitful field of dispute and controversy. The United States have acknowledged the independence of the Spanish colonies; their citizens are engaged in extensive and flourishing commerce with them, and no attempt can be made to subjugate these new powers, without bringing our interests and rights in direct conflict with the pretensions of the invaders. If England should join Spain in her contest with France, the chance of this country's remaining at peace will be still more diminished. Great Britain is a greater monopolist of the commerce of the world than even Spain. Her commercial system has extended itself into every quarter, and has been everywhere followed and supported by her wealth, her intrigues, and her arms. In America, Europe, Asia, and Africa, it is seen and felt, grasping and monopolizing the commerce and carrying trade of all nations. Every war has its preservation for an object, and every negotiation tends to extend and perpetuate it. With nations, advocating a system so opposite to ours, and with interests clashing with those of this republic at so many points, it will be next to impossible, in the agitation and tempest of a general political conflict, to preserve our harmonious relations, and we should be prepared to maintain our rights in the manner in which the rights of such a people should be maintained. These considerations will doubtless induce the government of this country to preserve a rigid and scrupulous neutrality between these great parties. It is indifferent between them. Our feelings as freemen and men

are indeed warmly interested in the success of Spain; but our national interests are opposed to that policy which its government would probably adopt in conformity with the public feeling of the nation, and a too hearty adoption of their cause would compromise some of our best interests in case of its success. But while this government should preserve a strict neutrality, it should be an armed neutrality. It is an unwise and unsafe presumption to trust to the equity and forbearance of nations at war. In all wars the rights of neutrals are too apt to be regarded by the belligerents in a secondary point of view. Under the pretended sanction of some new principle of national law, their commerce is daily subjected to some vexatious interruption, as this country has already ascertained by dearly bought experience. The questions constantly arising between belligerents and neutrals as to their respective privileges, are tenfold increased in wars concerning opinions, in which the chief civilized powers are engaged for the purpose of supporting or overthrowing any particular system. The elements of society are then in agitation, and the public mind is alive to start and settle new principles in politics and jurisprudence. To vindicate the rights of this country in such a crisis, the government must be able to defend its cause by other means than sound logic. We have not yet arrived at that Utopian age when redress will follow the perception of injustice, and there is still enough of uncertainty and confusion in national law to warrant discussion upon many of the most important privileges of neutrals. New and equally important questions will probably arise, and if we would enjoy the dignity and privileges of an independent neutral, and would give force to our remonstrances and negotiations, we must be prepared to back them with those more weighty reasons that are reserved for the peroration of a national argument.

Art. XVIII.—*An Essay on the Law of Contracts for the Payment of Specific Articles. By Daniel Chipman.* Middlebury, Vt. 1822.

This little volume, which was announced in our quarterly list of *new publications* for April, we have thought deserving of a more particular notice, as well on the score of its own

merits, as of the importance to the profession and the community of the subjects discussed.

Mr Chipman has for some years held a distinguished rank in his profession. And he is not the only individual of his family, whose talents and learning have contributed to the respectability which has at some periods characterized the jurisprudence of Vermont. It is not to the want of legal talents in the state that its degradation at other times is to be ascribed. It has been chiefly occasioned by the manner in which the judges are appointed, the tenure of their office, and, as a natural consequence, the total want, in many cases, of every qualification in those who have held judicial offices, which should command respect and confidence.

In his introduction, the author alludes to this subject, and avails himself of a fit occasion to remind his fellow-citizens of the grand defect in their state constitution, the want of a provision for a permanent and independent judiciary. To this they owe the instability in the administration of justice, which they have sometimes experienced; if indeed we must call by that name those strange decisions of causes, in which neither law nor justice seems to have been regarded or understood, and which strongly illustrate the '*misera servitus, ubi jus est aut vagum aut incognitum.*'

The vulgar prejudice in favor of the annual election of judicial as well as executive and legislative officers, Mr Chipman is disposed to attribute to the common mistake of confounding *civil* liberty, consisting in the impartial administration of equal and expedient laws, with *political* liberty, or the privilege of participating in the government, by the right of suffrage. There is, perhaps, no reason to doubt, that the confusion of ideas to which he refers is very common, and that its tendency is to produce the effect ascribed to it. But for ourselves, we should be quite as much inclined to attribute the jealousy, which is still so generally discovered towards an independent judiciary, to a different cause. We are rather disposed to regard it as the effect of hereditary prejudice, transmitted from the preceding to the present generation.

While this country continued dependent upon Great Britain, the people considered the appointment of their own judicial officers one of their greatest privileges. And where it had been enjoyed, they naturally regarded with extreme anxiety

and alarm the resumption of that power by the crown. Independence on the people was dependence upon the king, which they had too much reason to deprecate. It was therefore very natural that even honest and intelligent men, not much accustomed to analyze and discriminate on such subjects, should prefer to retain their judges in the same state of dependence, which was considered so important by their fathers, though in circumstances totally different.

A similar prejudice still maintains its ground in several of the states, with regard to the executive power, and it is easily traced to the same origin. Those who framed the state constitutions had been accustomed, before the revolution, to regard with extreme jealousy every exercise of executive authority; while they constantly looked to their legislature as their natural guardians and defenders. It was not therefore to be supposed they would suspect danger from that quarter. And it is to this circumstance we are doubtless to attribute that disproportionate division of power between the legislative and executive departments, in the constitutions of several of the states, which has already compelled some of them to make alterations, and rendered the same measure almost indispensable in others.

These are not, however, the only improvements, which the increasing light of science and experience has produced in our political institutions. In several of the states important amendments have been made, which show the triumph of sound philosophy over prejudice and false theory. In some cases, the palpable defects discovered by experience have occasioned those favorable changes. But they are perhaps to be chiefly ascribed to that almost faultless model which has been presented to the people in the constitution of the United States. We hail with sincere pleasure, as the pledge of still further improvements, the increasing attachment and veneration with which that great national compact is regarded.

Much however yet remains to be done. And it is no small abatement of our satisfaction to recollect, that there are still three among the states of the ancient union, and three others of those since added to the confederacy, which have not yet learned to appreciate the importance of a permanent and independent judiciary. In New Jersey, Ohio, and Indiana, the tenure of the highest judicial office is restricted to seven years, and in

Georgia to three years; while the good people of Rhode Island and Vermont have not thought it safe to trust those whom they appoint for judges longer than one year at a time. In many cases they would perhaps have been more wise, not to trust them at all.

The states just mentioned, with the exception of Indiana, are not less unfortunate, we think, in their mode of appointing judicial officers, than in limiting their term of office. In Rhode Island they are elected by the freemen; in New Jersey, Georgia, Vermont, and Ohio, by the legislature. In several of the other states the mode of appointing is the same, though the office is holden during life or good behavior, subject in some of them to the disqualification of a certain age, which in New York is sixty years, in Missouri sixty-five, and in New Hampshire seventy years.

The importance of a permanent and independent judiciary has been long felt and acknowledged by the wisest and best men in England, as well as in our own country. But there is one circumstance in our political institutions, which gives it peculiar value. It will be readily understood that we allude to the controlling power of the judiciary over the legislature, when, either through inadvertency or design, it transcends the limits of the institution.

It has been considered in other governments as an axiom in politics, that absolute, despotic power must reside somewhere. And this power the English government has entrusted to the parliament, whose jurisdiction, says lord Coke, is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds.

The danger to be apprehended from the abuse of this uncontrollable power is too manifest to require illustration. Indeed the frequent acts of attainder, and other measures of tyranny and cruelty, which have been pursued in that country, by a dominant faction under the name of a parliament, too clearly demonstrate that no legislative body can be safely trusted with it. And though Mr Locke and other writers upon government have strenuously contended that there resides in the people a redeeming spirit—a paramount authority to alter or remove the legislature, when, by abuse of the powers entrusted to it, those powers become forfeited, and again devolve upon the people; yet this authority, it has been observed, admitting

its existence in theory, is wholly ineffectual, because the frame of that government contains no provisions for carrying it into execution. The great difficulty is, who shall decide whether the legislature has acted contrary to the trust committed to it by the people? Shall the legislature decide? or shall the right of judging devolve upon the people? In either case it may be objected that the same body is, in some measure, party as well as judge. At the same time, where there is no other alternative, it seems more reasonable that he who appoints the agent should determine whether he has executed the trust confided to him, and remove him if he has violated or failed to perform it; than that the agent should decide upon the correctness of his own conduct. The latter is, however, the practical theory of the English constitution, 'and we venture to affirm,' says a distinguished commentator and judge, 'that so long as it lasts, the power of parliament is absolute and without control.' Its acts, therefore, if so expressed that the intention is clear and manifest, are binding upon the courts, however unreasonable and unjust.

It is obvious then, that the controlling power of the judicial department of government can exist only under a limited constitution,—that is, a constitution which contains certain specific limitations to the authority of the legislature. And in no other way could the limitations of legislative power be preserved from encroachment and violation, but by the agency of the courts of justice, whose duty it is to pronounce all legislative acts void, which are contrary to the manifest provisions of the constitution. Without such an efficient check, it would be vain and useless to insert in the constitution, restrictions of legislative power, or declarations of rights and privileges of the people. And hence has arisen the political axiom, that it is essential to a free government, that the judicial should be coextensive with the legislative power.

In the exercise of those high and important functions, which sometimes require it to pronounce the acts of another department of the government unconstitutional and void, the most independent judges must feel the great responsibility and delicacy of their situation. And they must often need the aid of every motive of patriotism, honor, and duty, to resist or disregard the influence of powerful individuals, wielding the force of a powerful and vindictive faction.

But it is not merely with a view to guard the constitution from violation, that an independent judiciary is necessary. The protection of the rights of individuals, especially in times of party excitement, is one of its high and sacred duties. And those who at such times minister in the sanctuary of justice, with all the support which official independence can confer, will find occasion for the highest exercise of firmness, prudence, and integrity. What then is to be expected of judges, who hold their offices at the will of a faction, and are selected, not for their talents and integrity, but because they belong to a party, and are pledged to execute its unhallowed purposes?

Such circumstances have not often occurred, and are not perhaps likely to occur in our country. But the people in some portions of it have profited little by their experience, if they have not learned to deprecate the evils and abuses of judicial dependence and instability. And we doubt not that Mr Chipman speaks from his own experience, when he says, 'So long as the judges shall depend for their continuance in office, not on their good behavior, but on an annual election by the legislature, they must be more than men, not to become party judges, whenever party spirit shall arise to any considerable degree. In such a state of things, there can be no government of *laws;* it must, in the nature of things, be a government of men.'

Besides the frequent change of judges in Vermont, there are other causes, we are told, of instability in the administration of the law. Among these, the most inveterate seems to be the restless spirit of legislating upon all subjects and on all occasions. Settled rules of the common law are set aside by statutes, and these in their turn are altered, amended, explained, or repealed, because a supposed wrong construction has been given to them by the courts. 'Or an explanatory statute is passed of more doubtful construction than the statute it was intended to explain.' In addition to all this, two revisions of the whole code of statutes have taken place, 'by means of which, before the sense and meaning of a law was determined by judicial decisions, it has been altered,—and it has often been made a question, whether the *law* should be altered, or a *judgment* set aside by act of the legislature, and the judges displaced.'

Still we are assured, that 'notwithstanding all the impediments which have been mentioned and others still more discouraging,' the administration of justice has been greatly improved, and the profession have no reason to despair of still further improvements. To promote that desirable end by affording his aid towards a correct decision of some of those difficult questions which frequently occur in the courts, is the object of the author of this essay. And in selecting for his subject 'The law of contracts for the payment of specific articles,' he has certainly chosen one, which sufficiently needed elucidation. Those who are led to examine the questions, to the discussion of which that species of contract often gives rise, will perhaps, with Mr Chipman, be surprised to find so little that is satisfactory in the books.

'My attention,' he says, 'was called to this subject by reading the case of *Weld* vs. *Hadly* in the New-Hampshire Reports. In that case it was decided, that "*when he to whom a tender of specific articles is made in pursuance of a contract, refuses to accept the tender, he acquires no property in the articles tendered, even when the contract is discharged by the tender.*" I was not less surprised at the decision, than I was, on examination, to find that the question had not been previously settled, and put at rest. This led me to a further examination of the authorities on the subject, and, to my astonishment, I found that the rights and duties of parties to contracts for the payment of specific articles—contracts of almost daily occurrence with all men of business in this state, were wholly unsettled—so much so, that I will venture to assert, that not even a professional man can, from the modern reports, or from the modern writers on the English law, either ascertain the rights and duties of the parties to such contracts, or the form of pleading adapted to the different cases as they arise.'

It is not our purpose to examine the legal doctrines of the writer, or his authorities and reasoning in support of them, which would be equally tiresome to our readers and ourselves. The subjects proposed for discussion are presented under the following arrangement. '1. The different species of contracts for the payment of specific articles, the place of payment, and what property is a lawful tender in discharge of each. 2. The pleadings and evidence on the part of the plaintiff. 3. The pleadings and evidence on the part of the defendant. 4. The

damages. 5. The consequence of a judgment in favor of the defendant, on a plea of tender and refusal, or on a plea that the defendant was ready, at the time and place, to deliver the property, and that the plaintiff did not attend, as it respects the property tendered, or ready to be delivered.'

Under the third section, the facts necessary to be stated, and the form and effect of a plea of tender of specific articles, are examined at considerable length; several important distinctions, which have been often overlooked, are pointed out with accuracy, and the whole subject is relieved from much of the obscurity and inconsistency, in which it had been involved by hasty and contradictory decisions.

In an elaborate discussion of the subject of the fifth section, Mr Chipman has very ably examined the case of *Weld* vs. *Hadley*, before referred to, which he states to be the only case in which that subject has been fully considered since the time of Lord Coke.

In the absence of common law decisions upon several points, which are brought into discussion by the author, he has not scrupled to resort freely to the doctrines and reasonings of Pothier, not merely for illustration, but as direct authority. And we are certainly not disposed to find fault with his availing himself of such valuable aid on this occasion, being ourselves much disposed to assent to the remark of Sir William Jones, that the greatest part of the admirable *Treatise on Obligations* is law in Westminster as well as in Orleans.

Several questions to which contracts of this class occasionally give rise, the author has undertaken to determine, though they have not yet been the subject of any judicial decision. And we are in the main well satisfied with the course of his reasoning, and think his conclusions generally preserve the analogies of the law; though we are not quite sure we should in every case adopt them in their whole extent. A few peculiarities of expression we have noticed, and in some instances a little obscurity, which however we are inclined chiefly to attribute to the subject, and the want of precision in the language of the books referred to. We think, also, that in the arrangement and distribution of the work, some further subdivisions might be made with advantage to those who have occasion to consult it, and especially to students.

Upon the whole, considered as a first essay, upon a branch

of legal learning involved in no small degree of obscurity and difficulty, we regard it as a production equally creditable to the author, and useful to the profession. And we have no hesitation in saying, that there is no lawyer in our country, however learned and profound, who will rise from the perusal of it without benefit.

Art. XIX.—*The Works of Maria Edgeworth, in six volumes. A new edition.* Published by S. H. Parker, Boston.

If Sir Walter Scott, though universally allowed to be the author of the novels, be entitled to the name of the 'great unknown;' Miss Edgeworth, though remembered with admiration by all who have ever read her, may with equal propriety be called 'the great forgotten.' The appearance of two volumes of a new and uniform edition of her works, from the press to which we are indebted for an edition of the Waverly novels in the same style, has excited in us the wish of recalling an old favorite to the memory of the public. It was formerly young men and women, not to say boys and girls, to whom the reading of the novels of the day was almost exclusively left by their elders; and so ordinary a branch of letters were they esteemed, that we know of more than one respectable social library, of which the rules imposed the same interdict on novels, as the venerable Accursius did on the Greek language; *Græcum est; non legitur.* Of the three novelists who had acquired a standard character in English literature, Richardson alone was admitted upon the shelves of serious libraries, protected as he was supposed to be, by number of tomes and stiffness of manner, from the danger of being generally read. While his rivals Fielding and Smollet, however superior in genius and wit, were not without reason placed on the same prohibited list with the licentious authors of an earlier date; and Tom Jones and Peregrine Pickle were as rarely almost to be met with as the New Atalantis. Miss Burney introduced a new era and a new style in works of fiction, and was thought safe reading, as far as a novel could be so; and next to her succeeded Miss Edgeworth. It cannot be said of the latter that she 'burst upon the world;' for

her earlier productions, particularly the most elaborate of them, Belinda, scarce ever rose to the first rank in the public estimation. It was her smaller efforts, her 'Parents' Assistant' and 'Popular Tales,' which first opened the hearts of all good people to her writings, and procured her such a popularity, that the Tales of Fashionable Life, and works which followed upon these, were anticipated with an eagerness, and read with a delight, which our youthful readers, who have come forward under the Waverly dispensation, will hardly credit. Had the field been left undisputed to her, we have no doubt she would have sustained the great popularity she then possessed. 'Miraculous invention' was spoken of, as her characteristic; she was in the full tide of success, and at precisely the time of life when the faculties possess their maturest vigor. At this moment, the Waverly star arose. Destined as it was to rise above all that English literature had to show in this department, we well remember that its first reception was by no means triumphant. It may teach a humiliating lesson as to the infallibility of taste, to reflect that many among those who claim deference for their opinions, turned off Waverly as an indifferent thing, nor was it till the appearance of Guy Mannering, that people began to feel that something beyond Greek and Roman fame, was at work. Since that time, every other writer in this class has been distanced, and the best established reputations thrown into the shade. So steadily has the public taste and curiosity been urged from this wonderful source, a Waverly novel once or twice a year has grown into such a second nature of our intellectual constitutions, that the rising generation must be at a loss to know what their elder brothers and sisters talked about, before such things existed. We are not sure that men in fact are not beginning to be tired of this long continued exhibition of mental splendor and power; and are getting weary of hearing Aristides called the just. It is quite common to hear in circles, not positively azure, that there is a 'great falling off in the two or three last novels;' and certain of the minor wits appear to have grown so uppish, by being pampered on this rich food, that they are amusing themselves with the incredible *niaiserie*, that not Scott, but a certain bugbear of a Dr Greenfield is the author of these works. The shocking nonsense which has been fabricated on this subject, and inflicted on an unoffending community, shows to what a length the scribbling Jeshuruns of the day will run.

To such of our curious young readers, as would like to know what people read and conversed about fifteen or twenty years since, we would strongly recommend subscribing for Mr Parker's edition of Miss Edgeworth's works. It is neat, correct, compendious, and economical. It will give them her several productions, in an uniform exterior and in an agreeable style of typography, some of which are not to be had in this country, at all, or in very sorry editions. Once possessed of these works, and acquainted with them, they will find that we were not a wholly forlorn race before the Scotch novels appeared. In natural gifts for a novelist, though inferior to Scott, Miss Edgeworth is inferior to him alone. Where she is inferior, it is not so much in that which properly belongs to the novelist, as in those higher and more splendid qualities, which are rather the portion of the orator and the poet, and which Scott has brought into action, in his tales, by a facility of application, of which the literary world has no other example. Miss Edgeworth is likewise inferior in learning to Scott; but learning also—profound, minute, professional, and technical learning—was never before thought of as an accomplishment of a novelist. It remained for the Heart of Midlothian and Mr Saddletree, to show us, that the niceties of the Scotch game laws in an almost unintelligible jargon of law and latin, could heighten the pathos of a fictitious tale. Miss Edgeworth herself, in her Patronage, had made a bold but unsuccessful attempt, to play with this ponderous foil. But in the great qualities of invention, observation of manners, familiarity with life, both elegant and common, of wit and of sense, Miss Edgeworth is not perceptibly inferior to Scott; and in natural powers, if natural they are to be called, is exceeded by him only in that realizing imagination which enables the possessor of it to perceive his mental creations with more than the distinctness of real life, and in that pathos, which is the last great gift by which the poet and the orator exercise their mastery over the human heart. Though inferior, we think, to him in these, we would by no means intimate that Miss Edgeworth does not possess them. A thousand passages, which will recall themselves to all who have read her works, abundantly manifest a vivacity and fertility of imagination, and a tenderness of feeling not often exhibited in an equal degree.

When we consider the circumstances, under which Miss

Edgeworth has written, the just admiration with which we read her works is heightened. An equal degree of merit in a female author, evinces a much greater mental vigor than in a man, and the whole constitution of society is so opposed to the developement of the female mind in that degree of maturity and conscious power, which are requisite for a successful writer, that a moderate excellence implies much greater native talent. The Abbé de Pradt, in his work on the *Concordats*, has ventured to put Madame de Staël on a level with Mr Burke. We own this sounds to us like monstrous adulation. But when we think of the different education of these two persons, of Burke trained in the British parliament in opposition or union with the greatest minds, and in the administration of the greatest human interests, and Madame de Staël who has given her own character in one line, in saying, 'le fantôme de l'ennui m'a toujours poursuivie;'* and who speaks of desertion by fashionable society, as a situation insupportable, 'surtout pour une femme,' we are more ready to endure the comparison. Beside the natural repression against which a female of talents must labor, before she can become a distinguished writer, Miss Edgeworth lived under many disadvantages. Her remote provincial abode in Ireland was among them, except in the single circumstance of enabling her to view more closely the manners and character of the common Irish. But it is plain, that her attention was given to this subject more than its relative importance required, and that her power of observation has been injured in its application to a large range of human nature, by the length of time during which the lower Irish were forced exclusively upon her notice. The home of Miss Edgeworth, though in many respects a happy one, was not in all things favorable to the developement of her genius. There can be no indelicacy toward a living character, in thus alluding to what her Life of her father has made known to the world. Miss Edgeworth has, for a great part of her life, been employed in the domestic care and education of seventeen or eighteen children of her father. Though this occupation also was advantageous to her as a writer, in furnishing her with materials for one of her most esteemed works; and though the business of education, pursued as Miss Edgeworth appears to have pursued it, is certainly calculated to strengthen and quicken the faculties, yet so many children, and

* Dix Années d' Exil. ch. ii.

those not her own, are, in all conscience, too many, and in the best regulated family imply a great deal of pretty humdrum nursery work.

The close literary connexion, which subsisted between Miss Edgeworth and her father, was, we think, highly disadvantageous to the formation of her literary character. Mr Edgeworth was a sensible, shrewd, managing man, and was evidently looked up to in his house as a person of uncommon powers. His mind, however, was every way inferior to his daughter's. Instead of aiding her by his counsels, his assistance, and his very dull prefaces, we think it plain that his influence hung like a millstone upon the wings of her fancy. Her spirit could derive no warmth from the intercourse with his. She was prevented from nourishing it in her own silent and lonely meditations, by living constantly in the respected presence of such a dry, matter-of-fact, and withal self-conceited person. The society of kindred spirits is not necessary for the formation of the mind; books supply its place, and solitary exercises furnish a different but perhaps as fine an exercise as the communion of intellects the most congenial. But wo to the understanding, however brilliant its powers, that is compelled by natural affection, or by any other cause to look up to, to respect, to admire a narrow, sterile mind. The family associates also of Miss Edgeworth were such as to form her merely to an elegant mediocrity. Above this level rise none of the Sewards, Darwins, Thomas Days, Honora Sneyds, and others, with whom Mr Edgeworth or his daughter or both were connected; and from whose intercourse or correspondence, her standard of excellence, if not ascertained, must necessarily have been modified. Society favors the individuality of female character so much less than that of men, that all these causes must have operated more on Miss Edgeworth's mind, than the intrinsic insignificance of some of them might seem to threaten. The social tyranny which exacts of every female a certain portion of female littlenesses, is so strong, that even the possession of sovereign power and kingly talents to sway it, was not enough to emancipate queen Elizabeth from the necessity of putting on some ladylike coquetries and airs. In common life, while men are allowed to be as peculiar, as indivdual, as independent as they will, and are prized in proportion to their originality, their poor wives and daughters are

almost as much subjected to the fashion of the time and place in their characters and pursuits, as in their dress.

We will not now engage in so difficult a speculation as that, whether there be a native difference between the intellect of men and women; whether, as Mr Lawrence urges, there be a sex to the mind. In many of the most important affairs of life the men have taken for granted that there is a marked inferiority on the part of the women, and have accordingly denied them a few small privileges, such as exercising political franchises and inheriting real estate, of which they have thought fit to retain the monoply in their own hands. Wherever, nevertheless, women are called to administer affairs usually intrusted to men, it does not appear that they are apt to fail in masculine powers. The queens of the earth, whom chance has called to the throne, pass very good muster with the kings of the earth; and whenever it so happens that large affairs are to be managed by a widow, by an heiress, or a single woman, it is certain that there is a fair chance of the said affairs being conducted with skill and energy. In Europe it is an extremely common thing for widows to conduct the commercial or manufacturing establishments of their late husbands; and there are few trades in France, from those which require most delicacy and skill, to the coarsest pursuits of husbandry, where the two sexes do not divide the labor in nearly equal proportions. If these reflections and many others of the same kind should lead us to think that the difference of intellectual character between the two sexes arises from education, we shall feel how much more respect and admiration are due to a lady, who, like Miss Edgeworth, has been able to break through the obstacles which society opposes to the acquisition of female literary excellence.

At any rate she is the author of works not to be forgotten; of works which can never lose their standard value as 'English classics,' and deserve that honorable name infinitely more, than half the dull and licentious trash bound up in our libraries, under that title. If, as there is no question, the intellectual taste for life, is, in common cases, determined by the books one reads between the ages of fifteen and twenty-five, to Miss Edgeworth will ever belong the honor of having thus been the instructress of one generation of her contemporaries, and that too at a very crowded and brilliant period of English

literature. Her novels always found an eager reception, at a time when the poetry of Scott, of Campbell, and of Crabbe, was issuing in its freshness from the press, when the Edinburgh and Quarterly Reviews, then splendid novelties, were to be duly read and studied, when Madame de Staël was at her zenith, and, in a word, when the competition of the noblest wits was only less keen, than at the present day. We have no right to say that this competition has affrighted Miss Edgeworth, and we can only lament that she should have, for any reason, withdrawn from it. It is true, that all classes and orders of readers have agreed to like Scott's novels, more unanimously than any thing was ever liked before; that not only in England and in America, but in Germany and France, they meet with a reception more wide, more prompt, more superstitiously fond, than could be believed possible, were it not known to be real. Yet nevertheless this popularity cannot suspend the known laws of human nature. There is, and must be a large class of readers, and those of the most cultivated and judicious taste, who, if they would tell the truth, would say that the Absentee is as good as Nigel, and Ennui far better than the Legend of Montrose. There must be a large class of those readers on whose suffrages the rank of writers will finally rest, who would at least esteem a novel of Miss Edgeworth extremely valuable by way of a change; and we know not what higher compliment ever could be paid to any novel, than to say that one would pass to its perusal with interest, from that of the most fascinating works ever produced.

ART. XX.—*Ἀριστοτέλους Ἠθικὰ Νικομάχεια, ἐκδιδόντος καὶ διορθοῦντος Α. Κ. Δαπάνῃ τῶν ἀναξίως δυσπραγησάντων Χίων. Ἐν Παρισίοις. ΑΩΚΒ.*

The Ethics of Aristotle to Nicomachus, revised and edited by A. Coray, at the expense of the injured and oppressed Sciotes. Paris, 8vo. 1822.

SCHOLARS are too well acquainted with the reputation of Coray, to need, on our part, any prolix remarks upon his character. This venerable Greek, if now living, is in his seventy-sixth year, and must have published the work before us when

passed the age of seventy-five. The preface, of which we shall presently give an account, is written with a vigor not too common at any age, and truly remarkable at the advanced period of life, which Dr Coray has attained; while the ample notes in ancient Greek, are as conspicuous for the rare learning which they display, as for the command which they exhibit of the pure dialect of the old classical writers. We are not acquainted with a specimen of ancient Greek, from the pen of any European scholar of the present day, that can compare with the writings in the ancient dialect of Mr Coray, writings which, instead of being confined to short occasional productions, amount to several volumes of annotations on ancient authors. The course of education, which has been pursued in Greece since the revival of letters, notwithstanding the unavoidable imperfection of their schools, has been more favorable to the acquisition of fluency in the use of the ancient tongue, than the methods of studying adopted in the several European nations. The Grammar of Gaza, written in ancient Greek, has been long the first book put into the hands of learners; and the greater part of this grammar is committed to memory. Besides this, it does not appear that the traditionary acquaintance with Greek, as a living tongue, has ever ceased among persons of education in Greece. The fugitives from Greece, in the fifteenth century, certainly brought with them to Italy this traditionary acquaintance with the language of their country; and the ritual of their worship alone and the use of the Greek Testament must have kept it up in the church.

The volume before us is dedicated to 'the newly constituted government of all the Greeks.'* It forms the fourteenth volume of the Ἑλληνικὴ Βιβλιοθήκη, which Mr Coray has edited. The ten first volumes were published at the expense of the brothers Zosimades, whose name and munificence are hnown to all acquainted with the literature of the modern Greeks. Of these ten volumes, two contained the works of Isocrates, six the works of Plutarch, and two the Various Histories of Ælian, the Fables of Æsop, the Stratagems of Polyænus, and some smaller works. From the tenth volume onward the work has been continued, at the expense of the funds of the school at Scio. They contain tracts of Galen and Xenocrates,

* Τῇ νεοσυντάκτῳ Πανελλήνων πολιτείᾳ τὰ Ἀριστοτέλους Ἠθικὰ, ὁ Ἐκδοτής.

the Thoughts of Marcus Aurelius, the first volume of Strabo, and the Politics and the Ethics of Aristotle. Most of the latter volumes, besides the critical and explanatory notes in ancient Greek, contain prefaces or introductions in the modern dialect, which Dr Coray has made the vehicle of various prudential and hortatory addresses to his countrymen. We propose, at the present time, to call the attention of our readers to the introduction of this work; and as few opportunities present themselves to most scholars in this country of comparing the present dialect of the Greeks with their ancient tongue; and as Dr Coray is allowed to write a purer dialect than any of his learned countrymen (though, as one party among them alleges, a dialect, for this very reason, less genuine), we shall accompany most of our extracts with the original in a parallel column.

Εἰς τὴν ἔκδοσιν αὐτῶν ἐτόλμησα καὶ τινὰς διορθώσεις τοῦ κειμένου, ὡς ἔκαμα καὶ εἰς τὰ ὁποῖα πέρυσιν ἐξέδωκα Πολιτικὰ τοῦ φιλοσόφου. Ἐλπίζω ὅτι δὲν θέλουν κατακριθῆν ὅλαι ἀπὸ τοὺς ἱκάνους νὰ κρίνωσι τὰ τοιαῦτα. Σημειώσεις ἐπεθύμουν νὰ γράψω μακροτέρας διὰ τὸ δυσνόητον τοῦ συγγράμματος· ἀλλὰ τὸ βαρὺ γῆρας, βαρυμένον ἔτι πλειότερον ἀπὸ τὰς ἀπροσδοκήτους συμφορὰς τῆς Χίου, δὲν μ' ἐσυγχώρει τόσους κόπους. Μόνην παρηγορίαν εὑρίσκω ταύτην, ὅτι βλέπω τοὺς συμπατριώτας μου, ὅσοι ἐσώθησαν ἀπὸ τὴν μάχαιραν τοῦ ἀνόμου τυράννου, παρηγορουμένους μὲ τὴν ἐλπιζομένην τελείαν ἀπολύτρωσιν τῆς Ἑλλάδος, καὶ μὲ τὴν γενναίαν ἀπόφασιν νὰ ἀνακτίσωσι τὴν γῆν τῆς γενέσεως αὐτῶν πολὺ λαμπροτέραν τῆς προτέρας.

Ἡ Ἑλληνικὴ βιβλιοθήκη ἐτυπόνετο ἐσχάτως καὶ τυπόνεται ἀκόμη μὲ δαπάνην τῶν Χίων. Εἰς τὴν κεφαλίδα τῶν Πολιτικῶν τοῦ Ἀριστοτέλους ἐσιωπήθη τὄνομά των, διὰ τὸν φόβον τοῦ ἀγρίου τυράννου. Ἀλλὰ τώρα, ἐπειδὴ δὲν ἔμεινε τί ποτε πλέον νὰ φοβῶνται ἀπ' αὐτὸν, καὶ τὄνομά των ἐπαναλαμβάνει τὸν τόπον του, καὶ αὐτοὶ μὲ τοὺς λοιπούς των ὅλους ἀδελφοὺς Ἕλληνας ἐμπορροῦν καταφρονητικῶς νὰ φωνάζωσιν εἰς τὰς ἀκοὰς τοῦ τυράννου ὅ, τι πρὸ εἰκοσιδύο ἐτῶν τον ἐκαταρώμην, ἀγανακτῶν διὰ τῆς Ἑλλάδος τὴν δυστυχίαν,

In the edition of the Ethics, I have ventured some corrections of the text, as I did also in the edition of the Politics of Aristotle, which I published last year. I hope that they will not all be condemned by those competent to judge of these matters. I wished to write longer notes, on account of the difficulty of the original. But the heaviness of age, rendered still more grievous by the unlooked for disasters of Scio, has not permitted me such efforts. I find but one consolation, which is this, that I see those of my countrymen, who have escaped the sword of the lawless tyrant, cheered by the hope of the entire deliverance of Greece, and with the noble purpose of rendering the land of their birth more glorious than before.

The *Grecian Library* has of late been printed and is so now at the expense of the Sciotes. Their name was omitted at the head of the *Politics* of Aristotle, through fear of the stern tyrant. But now, that there is nothing left for them to fear from him, their name resumes its place, and they themselves, with all their Grecian brethren, may scornfully cry in the ears of the tyrant, what, twenty two years ago, incensed at the calamities of Greece, I denounced against him, "although thou gnawest my roots, O goat, I shall yet bear fruit, that shall yield a libation for thy sacrifice."

Κἂν με φάγῃς ἐπὶ ῥίζαν, ὅμως ἔτι καρποφορήσω
Ὅσον ἐπισπεῖσαι σοι, τράγε, θυμένῳ.

Δὲν εἶναι δίκαιον ὅμως νὰ σιωπήσω τὴν πρόθυμον συνδρομὴν εἰς τῶν Πολιτικῶν τὴν ἔκδοσιν ἑνὸς ἀπὸ τοὺς ὁμογενεῖς· τοῦ ὁποίου μὲ κακοφαίνεται ὅτι δὲν με συγχωροῦν αἱ περιστάσεις νὰ φανερώσω τὸνομα. Ὁ χρηστὸς πολίτης οὗτος ἔπῆρε σώματα τῶν Πολιτικῶν 150, καὶ τὰ ἔστειλεν εἰς τὴν Ἑλλάδα μὲ σκοπὸν νὰ ἐλαφρύνῃ τὸ βάρος τῶν Χίων, οἱ ὁποῖοι κατεδαπανῶντο τότε νὰ τρέφωσι καθημέραν τοὺς μέλλοντας νὰ πληρώσωσι τὰ τροφεῖα μὲ τὸν ἀφανισμὸν τῆς Χίου.

It is not just nevertheless, that I should conceal the liberal contribution toward the publication of *the Politics* of one of our countrymen, whose name it grieves me that circumstances permit me not to disclose. This excellent citizen took 150 copies of the Politics, and sent them to Greece, in order to lighten the burden of the Sciotes, then charged with the daily support of those who were soon to repay the costs of their support, with the destruction of Scio.

We have made this extract to satisfy our readers, if any needed the information, as to the character of the two parties in the murderous conflict, which is waging in Greece. They perceive that it is not, what some would represent it, a bloody struggle between between barbarous masters and not less barbarous slaves, in which it is difficult to take a lively interest. It is, on the contrary, a struggle between cruel and barbarous masters, and a people whose hard earned wealth is devoted to the collection of libraries, to the printing and circulation of books, and to the improvement of the means of education. At the very moment when blood was flowing in the streets of Scio, beneath the Turkish sword, when its wives and daughters were sold by tens of thousands into a heart-rending slavery, and its sick and aged burning alive in the houses, the funds of the college, which flourished in this devoted island, were employed at Paris in the publication of the choicest remains of ancient literature; employed beneath the eyes of a christian government, and in the face of Europe.

The introduction or preface to the work we are considering, taking occasion from the successive publication of the Politics and Morals of Aristotle, treats, in a practical way, and with application to the present state of Greece, the all important thesis maintained by Cicero, that morals and politics are one. To their separation, or in other words, to the administration of government on any other than the principles of morality, Dr Coray traces the vices of all states. The following is one of his illustrations:

Διὰ τὸν χωρισμὸν τοῦτον τῆς Ἠθικῆς ἀπὸ τὴν Πολιτικὴν κυβερνᾶται σήμερον ἡ Ἑλληνικὴ Ἑπτάνησος, ὡς δὲν ἤλπιζεν,

By this separation of morals and politics the Seven Ionian Islands are now governed, not as they hoped, by a nation who

ἀπὸ ἔθνος τὸ ὁποῖον συνέτριψε πρὸ πολλοῦ τῶν ἰδίων αὐτοῦ δεσποτῶν τὴν σιδηρᾶν ῥάβδον. Διὰ τὸν χωρισμὸν τοῦτον, ὄχι μόνον ἐξωρίσθησαν ἀπὸ τὴν ἰδίαν πατρίδα οἱ ταλαίπωροι Παργηνοί, ἀλλὰ καὶ συκοφαντοῦνται ὡς ἀδίκως καταρώμενοι τοὺς αἰτίους τῆς ἐξορίας των. Ὁ χωρισμὸς οὗτος τῆς Πολιτικῆς ἀπὸ τὴν Ἠθικὴν καταδικάζει σήμερον ὅλους τοὺς Γραικοὺς, ὡς ἀποστατάς. Διὰ τί; διότι ἔχασαν πλέον ὑπομονὴν νὰ συζῶσι μὲ θηρία!!! Τοῦ χωρισμοῦ τούτου...Ἀλλὰ τίς ἡ χρεία να καταριθμῶ τὰ πολλὰ καὶ μεγάλα κακὰ τῆς χωρισθείσης ἀπὸ τὴν Ἠθικὴν Πολιτικῆς, τώρα μάλιστα, ὅταν ἡ διόρθωσις αὐτῶν μελετᾶται καὶ ἐλπίζεται ἀπὸ τοὺς φρονίμους ἡγεμόνας τῶν φωτισμένων ἐθνων;

long since broke the iron rod of its own despots. By this separation, the miserable inhabitants of Parga were not only exiled from their country, but are denounced as unjustly execrating those guilty of their exile. This same separation of politics and morals now condemns the race of Greeks as rebels. And why? because they have no longer the patience to be degraded to the level of beasts...But why need I enumerate the many and great evils of the separation of morals and politics, now especially, that their correction is meditated and desired by the wise rulers of the enlightened nations?

The gravity of the occasion does not allow us to doubt of the sincerity of the compliment to the holy alliance, in the close of this extract; it might else seem like bitter irony.

In the progress of his introduction, Dr Coray discusses the questions, whether it be possible to effect an entire union of morals and politics, that is, to administer a state purely on moral principles; and, secondly, whether it would be practicable for a state thus administered to prolong its political existence to perpetuity. These questions give occasion to examine the rise and progress of civilization and of moral science in Greece, and to compare the doctrines of the Academic, Peripatetic, and Stoical philosophy, with respect to morals. Dr Coray acknowledges that the union between morals and politics was scarcely understood and no where successfully applied, in the ancient states, and attributes the great superiority of modern Europe in this respect to the art of printing. As the ultimate design of the whole essay is to address a seasonable word to those now engaged in modern Greece, in laying the foundations of a new independent state, Dr Coray passes to the application of his thesis to several points of legislation, affecting this important union of morals and politics. In mentioning the causes, by which the citizen is defrauded of the fruits of his labors, he alludes to the multiplication of religious festivals, in a somewhat amusing manner:

Στερεύεται ἀκομὴ ὁ πολίτης τοὺς καρποὺς τῶν ἰδίων κόπων, ὅταν ἀναγκάζεται νὰ ἑορτάζῃ συχνά. Αἱ ἑορταὶ ἔγιναν εἰς ἀνάπαυσιν τῶν κόπων, ἀνάπαυσιν ἀναγκαίαν

Again, the citizen is defrauded of the fruits of his labors, when he is compelled to keep frequent festivals. Festivals were designed as a recreation from labor, a

εἰς τὸν κοπιάζοντα, διὰ νὰ μὴν ἐξαντλήσῃ τὰς σωματικάς του δυνάμεις. Ἀλλ' εἶναι ὄχι μόνον ἄδικον, ἀλλὰ καὶ γελοῖον, νὰ τὸν ἀναγκάζῃς νὰ ἀναπαύεται, ὅταν αὐτὸς δὲν αἰσθάνεται χρείαν ἀναπαυσέως. Ἐὰν τό, Οὐ σχολὴ δούλοις, ἔγινε παροιμία τῶν τυράννων, δὲν εἶν' ὀλιγώτερον τυραννικὸν νὰ διάζεται ὁ πολίτης νὰ σχολάζῃ, ὅταν εἰς αὐτὸν συμφέρῃ νὰ ἀσχολᾶται. Τοιαύτα δία ὄχι μόνον δεσμεύει ἀνόμως τὴν ἐλευθερίαν τοῦ πολίτου, ὄχι μόνον στερεύει καὶ αὐτὸν καὶ ὅλην τὴν πολιτείαν ἀπὸ τὰ κέρδη τῆς ἐργασίας του, ἀλλὰ καὶ τὸν παρακινεῖ εἰς πράξεις κακὰς, μὴ δυνάμενον νὰ ἀσχολῆται εἰς τὰ καλὰ. Τὰ κατηλεῖα καὶ τὰ πορνοστάσια τὰς ἑορτὰς μάλιστα γεμίζονται.

recreation necessary for the laborer, that he may not exhaust his corporeal powers: But it is not only unjust, but even ridiculous, to compel him to relax, when he himself feels no need of relaxation. If it was a proverb of tyrants, that *there is no leisure for slaves*, it is not less tyrannical, that the citizen should be compelled to be at leisure, when it is for his interest to be employed. This constraint is not only an unjust encroachment on the liberty of the citizen, not only deprives him and the whole community of the value of his labor, but excites him to vice, from the inability of being virtuously occupied. It is on the festivals that places of vicious resort are most crowded.

In speaking of the obstacles to the union of morals and politics, Dr Coray attributes much to the influence of the monks and the nobles in defeating it. So insignificant is the monastic institution, in any political respect, in Europe, that we presume this part of his remarks is exclusively designed for the meridian of Greece. The monastic establishments, in that country, have enjoyed a greater share of protection, under the Turkish government, than individual rights of any kind. Meteora in Thessaly, Megaspelia in Arcadia, Mount Athos, and numerous other extensive and wealthy monastic establishments, having been able to purchase from time to time the confirmation of their privileges, have afforded an asylum to a large class of monks, and their influence has of course been in proportion to their numbers and wealth. Dr Coray informs us in a note, that, notwithstanding the base and mercenary conduct of this class on some occasions, during the present war in Greece, they have generally distinguished themselves for their readiness to sympathise and act with their countrymen.

With respect to the other privileged class, namely, the nobility, Dr Coray enters more into detail, referring to the provisional constitution, which has been adopted in Greece, in two articles of which it is made the duty of the executive branch (ἡ νομοτελεστικὴ ἐξουσία) to propose some law to the assembly, relative to badges of honor and rewards for distinguished citizens. Dr Coray considers this as a proposal, in disguise, for an order of nobility, and, as such, he treats it justly with alternate contempt and ridicule. If it be true that, in an old country, it would be an act of violent injustice to dis-

franchise a privileged hereditary class, it is not less true, that to attempt to create one where it does not exist, would infallibly result in exposing the unhappy persons selected for this object to the ridicule and hatred of their fellow-citizens. The most powerful prince that ever ruled, declared it impossible to make a word, by law; to make an institution which must rest on the habits and prejudices of the people, must be surely harder.

Ἔπειτα, τὰ ὑλικὰ καὶ αἰσθητικὰ παράσημη ταῦτα σύρουν ἐξοπίσω των φυσικὰ καὶ τοὺς ὁλότελα ἀσημάντους τίτλους· εἰς ἡμᾶς δὲ καὶ γελοίους, ἂν προσκολληθῶσιν εἰς ὀνόματα προγονικὰ, οἷον Θεμιστοκλῆν, Ἀριστείδην, καὶ ἀλλὰ τοιαῦτα, ὁποῖα συνειθίζουν σήμερον πολλοὶ ἐξ ἡμῶν, ἢ αὐτοὶ μετονομαζόμενοι ἢ ὀνομάζοντες τὰ τέκνα των. Ἡοία, παραδείγματος χάριν, σύνταξις ὀνομάτων καὶ συγκόλλησις ᾧωμολοχικωτέρα δύναται νὰ ἐπινοήθῃ ἄλλη παρὰ τὸν Κόμητα Θεμιστοκλῆν, τὸν Βαρόνον Ἀριστείδην, τὸν Μαρκέζην Δημοσθένην, τὸν Δοῦκα Φωκίωνα, ἢ τὸν Πρίγκιπα Σωκράτην· καὶ μάλιστα ἂν οἱ Κόμητες, οἱ Βαρόνοι, οἱ Μαρκέζαι, οἱ Δοῦκες, καὶ Πρίγκιπες Ἕλληνες οὗτοι καθίσωσι καὶ δικασταὶ εἰς αὐτὸν τὸν Ἄρειον πάγον.* Τοιαῦτα ἐπίθετα, ὡς ξένα τῆς Ἑλλάδος, οὔτ' Ἑλληνικὸν στόμα πρέπει νὰ τὰ προφέρῃ, οὔτ' Ἑλληνικὴ ἀκοὴ νὰ τὰ ὑποφέρῃ.

In the next place, these material and sensible insignia draw after them naturally titles wholly insignificant, and for us also ridiculous, when attached to those ancestral names, such as Themistocles, Aristides, and others, which many of our citizens are accustomed to adopt, either changing their own names or in naming their children. What conjunction of names, for instance, can be imagined more ridiculous than that of the Count Themistocles, the Baron Aristides, the Marquis Demosthenes, the duke Phocion, or the Prince Socrates; especially if these Grecian Counts, Barons, Marquesses, Dukes, and Princes, are to sit as judges of the Areopagus.* Such titles, so foreign to Greece, ought neither to be uttered by a Grecian tongue, nor endured by a Grecian ear.

This passage is succeeded by a very judicious course of remark, on the folly of attempting to found a nobility in Greece. It appears from the observations of Dr Coray, whose testimony to the matter of fact will be allowed to be decisive, that all the traces of the nobility of the Greek empire have been effaced, in the indiscriminate subjection of the nation to the Turkish yoke, commencing after so many ages of degeneracy, as must themselves have produced the extinction of most of

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* Ἴδα καὶ τὄνομα τοῦ Ἀρείου πάγου προσκολλημένον εἰς τὴν Δικαστικὴν ἐξουσίαν. Ἐπαινετὸν εἶναι ἡ μίμησις τῶν προγονικῶν καλῶν· ἀλλ' αὐτὴ στέκει εἰς τὰ πραγματὰ, καὶ ὄχι εἰς τὰ ὀνόματα. Ἂς σπουδάσωμεν ν' ἀποκτήσωμεν δικαστήρια ἀδέκαστα, ὡς ἦτον ὁ περίφημος Ἄρειος πάγος, καὶ ἂς ἀφήσωμεν τὸ ὁποῖον δὲν ἁρμόζει πλέον εἰς αὐτὰ ὄνομα.

* See also the name Areopagus attached to the judicial power. The imitation of what was good in our ancestors is praiseworthy; but let it be in things, not in names. Let us endeavor to obtain a judiciary as incorrupt as the renowned Areopagus, and give up a name which is no longer applicable to it.

the ancient families. The barbarity of many of the family names of the *soi-disant* Greek nobles, are sufficient to convince us that they can be neither of Greek, Roman, nor even Venetian descent, but the growth of the ignorant ages which have succeeded the conquest of the Turks. The only source of any thing like nobility among the Greeks, since the Turkish domination, has been the government of the provinces of Wallachia and Moldavia. The unfortunate aspirants to these offices, the almost infallible passport to the bowstring, have assumed the name of Vlachbey (βλάχμπεϊ) or prince of Wallachia, and of this quality are the Murusis, Ypsylantis, Soutzos, and others, some of whose names appear in the contemporary accounts from Greece. Of the feeling likely to be excited by any attempt on their part, to set themselves up, as an order of Grecian nobility, we may judge by the following remarks of Dr Coray.

'If in the time of the Byzantine emperors, privileges of this kind existed, the tyranny of the Turks has abolished them all, or limited and engrossed them, in the sole detested person of the tyrant; unless one should account as privileges the two governments of Dacia, which he has entrusted to the Greeks, in order that the governors and their satellites may grow fat from the fruits of the bloody sweat of the miserable Dacians, only to be butchered themselves more promptly than others. Of such privileges received but from the blood thirsty sultan, and to be exercised, not towards their fellow-slaves the Grecians, but alien tribes, it must be the wish of all who enjoyed them, if any perchance have escaped the sword of the tyrant, that the recollection may perish, as the only mode in which they themselves will be recognised and loved as brethren by their fellow-citizens of Greece. If any one of them should be so unfortunate (which I do not believe) as now to think of such privileges, to hope for honors or expect precedence from the Greeks, on account of them, he would fall into a truly ridiculous error. The Greeks were never governed by them, but the Dacians.'

Considering the weight and authority, which the opinions of Dr Coray possess in Greece, it may not be wholly discreet, thus to draw invidious distinctions between the inhabitants of Wallachia and Moldavia, and the inhabitants of Greece proper. The government of the former by Grecian Hospodars, has never been regarded in the light in which Dr Coray represents it, as an aggravated slavery. On the contrary, no

part of Greece, out of Constantinople, possesses so numerous and wealthy a class as the Boyars of Wallachia; and Dr Coray's ταλαίπωροι Δάκοι set an earlier example of zeal for improvement in the schools of Bucharest than was set by Greeks, properly so called, in most parts of the Turkish empire. In fact as the Wallachians and Moldavians, whatever be their historical origin, are now Greeks in religion, many of them in language, all in ignominious subjection to the Turks, and in manful resistance to it, we should esteem it unwise to throw out any taunting comparisons of the degree not of liberty but of slavery, which they may have experienced. We presume, however, that Dr Coray's remarks had some judicious personal reference, and alluded to the absurd claims of the Wallachian princes to preferment or prerogative in the newly constituted state. Such a pretension at the present day, would be indeed, as our author calls it, ridiculous; and equalled only by the pompous infamy of the nobles of the Greeks of the last days of the empire, who were not ashamed, amidst the insults they received from the Turks, to preserve such titles as Πανυπερπρωτοσεβαστοϋυπέρτατος.* Well does Dr Coray, in repeating this difficult title of dignity, exclaim, 'Wretched tribe! these noble polysyllables submitted to the Turks!'

As means of improving the state of his native land, and hastening its progress to independence, Dr Coray justly recommends an attention to the business of education, and directs the notice of his countrymen to the teaching of the elementary branches on the system of mutual instruction (διὰ τῆς ἀλληλοδιδακτικῆς μεθόδου), and the study of the ancient Greek. As more immediate means of pursuing the present contest with success, he enforces the necessity of husbanding the resources of the country, consisting in taxes to be equally levied on all, and on the voluntary contributions of the wealthy friends of Grecian liberty. In a note is mentioned, with deserved commendation, the generosity of a citizen of the name of Varvaces, whose donations to the public have amounted to six hundred thousand roubles.—In the conclusion of this essay the Greeks are exhorted to strengthen their naval power, as the surest means of prosecuting the war to final success; and the essay closes with an injunction to conduct the contest with hu-

* Ducange vouches for this title. We should not better know how to translate πανυπερπρωτοσεβαστοϋπέρτατος, than by Honorificabilitudinitatibusque.

manity. 'Our warfare is with Turks,' says he, 'but let us not contend like Turks.'

Such is a naked outline of this interesting treatise. It has suggested some ideas to us, relative to the present state of Greece, to which we still further ask the attention of our readers. It is the preface to a learned edition of an ancient Greek classic, published by a Greek citizen, at the expense of the unfortunate Sciotes, and designed for use in the schools of that country. Even these few facts may serve us as a standard, whereby to measure the state of civilization of modern Greece. The contradictory and often splenetic accounts of travellers, and the unfavorable pictures which they have given us of those parts of the Grecian character, with which travellers and factors become acquainted, have done much to weaken the public sympathy for the Greeks. We have been told that they are barbarous, superstitious, fraudulent; and, in all moral qualities, no better than their Turkish tyrants. We in this country, however, at least ought to be careful how we adopt the representations of travellers as to a people's character. If our national character were to be ascertained in this way, we must not only be proclaimed to the world as possessing most of the very vices charged to the Greeks, but other base qualities not yet laid to their charge. Not a year passes, in which the English press does not send forth the attestation of some worthy tourist to all that is odious, contemptible, and flagitious, as existing in America. From these accounts we naturally appeal to facts, which are in the face of the world. To public facts then we appeal, in behalf of the Greeks. They are, in their religion, christians of a most ancient and venerable communion, and in their church alone, of all the churches in christendom, the New Testament is read in the original tongue. When we are told of the ignorance and superstition of the common people and of the inferior clergy, we would ask whether any one supposes for a moment, that these are greater in Greece than in Russia, in Italy, and in Spain. Moreover, in this fact, that the Greeks are christians, no small testimony is paid to their character. Every thing said in commendation of the boldness and courage of the primitive church, applies, in no small degree, to the faithful remnant in Greece, at the present day. Do we commemorate the pious constancy of those, who, either against the domestic tyranny of the Jewish hierarchy,

or the haughty persecution of the Roman paganism, held fast their faith; and do we deny all commendation to those who hold it fast in like manner against the merciless domination of mahometanism? Conscious of the little effort which it costs us to maintain the public profession of christianity, we do not render justice to those, who frequent their churches amidst the insults and outrages of unbelieving and barbarous task-masters. In the next place, the state of education in Greece is a fact before the world, which entitles them to our sympathy as a civilized people. It is well known that several of their high schools compare advantageously with those in Europe. That of Scio, before its late destruction, was perhaps equal to any seminary of learning in the United States of America. Four hundred pupils resorted to it, from various parts of Greece. Instruction in the highest branches was given by twenty teachers, most of whom had been educated at Paris, in Italy, and in Germany. The most popular text-books in the exact sciences, in morals, and metaphysics, were translated from English, French, German, and Italian, and made the basis of the instruction. A library of ten thousand volumes had already been collected, and a considerable sum was annually appropriated to its increase by the liberal Sciotes; at whose expence also the six last volumes of the Grecian classics were published at Paris. In addition to all these means of education at home, a large number of young men were annually sent to the German, Italian, and French universities, to receive the best education which those seminaries could furnish. These are all facts, of many of which we have personal knowledge; and they prove, we think, an attention to education which justly entitles the Greeks to our sympathy as a civilized people. It is another fact, that they are an enterprising and industrious people. The Greek marine, considering the disadvantages under which it necessarily labors, is a proof of astonishing perseverance and enterprize. Six hundred sail of vessels, great and small, belong to the Hydriotes, inhabitants of a little island, scarce known in ancient geography; and from Tricheri, a small town in the gulf of Volo, where, within the memory of man, a few fishing-boats only existed, eighty vessels navigate the Mediterranean. The Grecian vessels are many of them built with great beauty. Their skill in navigation is attested by the most competent witnesses, and we

have heard one of the most accomplished officers in our own service, speak with admiration of the success, with which he saw a Turkish squadron, in a squall, brought into port at Constantinople, by the dexterity of the Greek sailors on board it. We are accustomed to appeal to our marine as a proof of an enterprising character, of industry, and of progress in the arts of life. Do the facts we now mention—existing in spite of the most galling oppression on earth—prove less in favor of the Greeks? But it is not in this alone that the Greeks have made some progress in the arts. The ordinary branches of industry are pursued in Greece. Extensive cotton factories exist in Thessaly, conducted with such skill in the art of dying, that workmen have been sent for to introduce their processes into France. If all these facts, and many more like them, which may be gleaned even from the travellers who speak most unfavorably of the Greeks, are put together, and the obvious conclusions deduced from them, it will result that the Greeks are a christian, civilized, enterprising, industrious people, and entitled to the sympathy of the civilized world, in their present contest against the Turks.

This contest is of a peculiar character, one to which the history of modern Europe affords no parallel. The Turkish power was once great and formidable; and while it was so, the neighboring states of Russia and Austria were constantly at war with it, and every body prayed for their success. A horror of Turks, at least as old as the crusades, and older than the destruction of the lower empire, possessed the christian world; and in virtue of this horror, a war against them was like a war against pirates; all were allies against these *hostes humani generis.* The Turks are now weak. Their government, the worst constituted in the world, has not been administered for a century by a prince of those commanding military qualities, which formerly gave energy to the ill compacted mass. Their institutions, originating in a wandering and Nomadic life, and calculated only for it, have become more and more inadequate to their settled state. The nature of the Turkish institutions is such, that, as Burke says of the French king at his restoration, the people must be always on horseback. A stationary nation living in towns, cities, and villages, requires a permanent tenure of property, the art of printing, and, we think, we may add the christian religion, if in contact

with christendom. The Turks have neither; the Sultan is every man's heir, the art of printing is proscribed, and the profession of a strange and barbarous faith cuts off that bond of sympathy, which in so many ways unites christians, both as communities and as individuals. Such a state of things is very compatible with a Tartarian existence, and with the acquisition of great power and the achievement of extensive conquests, by dint of an overwhelming troop of men and horses. But it is incompatible with stationary national existence, and it is a notorious fact that at the present day the Turkish empire is disorganized. It is this circumstance, which adds the darkest shade to the picture of Greece. The garrisons and armies of this enervated and disorganized empire, are still maintained, in their various encampments in the Grecian cities, by the possession of arms which the unfortunate Greeks too often stand in need of; by the want of concert among their victims; and by the desperation of having every thing to lose in the struggle. With these principles of self-preservation in themselves—none of which, it is plain, furnishes the means of final permanent success in the contest with an exasperated and outraged people—it is a melancholy, an odious truth, that the Turks derive their great strength from the jealousy of the principal European powers. Whoever reflects a moment on the conduct of Mr Pitt, in despatching a courier to Catharine II, to denounce war against that empress, if she occupied the single Turkish town of Oczakoff, is possessed, in this disgraceful step, of a key to the whole European policy with respect to the Greeks and Turks. A moment's cooler deliberation enabled Mr Pitt, by despatching a second messenger, to recall the first and to prevent England, and probably Europe, being plunged into a war on this point, at that time. But the shrewd Turk knows, and the unhappy Greek knows, that England had rather have the Sultan at Constantinople than the Czar; and that Russia, standing at the head of the holy alliance—the most solemn covenant ever formed by man, and of which the only avowed object is to secure the administration of Europe, on the principles of christianity—would yet, a thousand times, prefer the dominion of the Turks to that of the English. In this, perhaps, they do not exceed the ordinary limits of selfishness. But cannot all the skill of so many profound politicians contrive some league—is there no sketch or

prospectus of a covenant in the 'pigeon-holes of the bureau' of Prince Metternich, or Count Nesselrode, by which aid and countenance shall be offered to the Greeks; and their independence guarantied, not only against the Turks but against the allied powers. We think well enough of the princes and ministers of the present day, who, in the words of the author of 'Europe,' are 'not a group of Neros or Sejani, but, in general, persons of accomplished minds and amiable dispositions,' to believe that there is not an individual among them, who had not rather see the Greeks possessed of an independent political existence, than subjected to the present afflictive and heart-rending despotism of the Turks. We can think only of three considerations which stand in the way of such a league as we have mentioned, by which aid and assistance should be given the Greeks, and their independence guarantied against all persons whatsoever. The first reason may be, that if made independent, they might nevertheless in the sequel be seized upon by the neighboring powers, by Russia, by Austria, or by England. Against such a seizure, however, we would have the covenant forever to run. Not only for the moment, but as long as the danger or the possibility should exist of the event provided against. This is a very practicable measure. It has been acted upon more or less for three centuries. Every small state of Europe exists by virtue of it. It would contain nothing new, visionary, or enthusiastic, in favor of the Greeks. It would be doing no more for them, than is daily done for Holland, Portugal, and Rome; for every state of Europe but poor Poland, where the guardians were able to agree on the plunder. What would be the effect, if England should seize on Holland, by a *coup de main?* The Russian peace establishment of 800,000 men would receive marching orders, and the Cossacks of the Don would travel on a hair line down to the Hague. What would be the consequence if the Austrian eagle should pounce on the long coveted lands of the ecclesiastical dove? A hot press would sweep the Thames; prince Esterhazy would receive a note from Downing-street, expressive of 'the great interest which his Britannic majesty takes in the preservation of the integrity of the ecclesiastical state,' and the somewhat rusty sword of 'the defender of the faith' would leap again from the scabbard. The guarantee we mention would amount to no more than the admission of the Greeks as a nation into

the pale of christendom, and an extension to them of those privileges, which the balance of power in Europe secures to its states. Another reason against assisting the Greeks to become an independent nation may be, that their natural advantages are so great, their geographical position, their range of continental coast, their islands, and their climate, would so favor their growth, that they would themselves soon become formidable as a rival in commerce, or a competitor for power, to the great states of Europe. We have no idea of the possibility of such an event, though the question is too large for present discussion. We are inclined also to think that such a fear is too remote and contingent, to operate on the minds of the kings and ministers of the present day, and we have only adverted to it as a possibility. It cannot, we trust, be thought *probable*, that enlightened and christian princes and rulers would deliberately condemn their fellow men and fellow christians to the continuance of a cruel and barbarous tyranny, merely for fear that, as an independent power, they might come in for a share of the world's commerce. The third and only remaining conceivable reason which suggests itself to our minds is, that the Greeks are not held capable of governing themselves. The mode in which the Ionian islands have been dealt with favors this idea. A despotism more humane, but not less absolute, than that of the Turks, is maintained in those islands by the English ; and it is only by a strong military power, that the government of the lord high commissioner is kept up. This, we suppose, is defended on the ground that the Greeks of the Ionian Islands are unfit for their freedom. We know not what Count Capo d' Istria, a native of Corfu, and one of the emperor of Russia's ministers, may think of this ; or how the suggestion might sound to Ugo Foscolo, one of the first poets and scholars of the age, a native of Zante. But granting the unfitness of the Greeks of the Ionian islands for independence, (a slippery reason at least for not allowing them to make the trial of it,) every one knows that precisely these islands are the worst part of Greece. Their position as a frontier between Greece and Italy, and the detestable corruption of the Venetian government, under which they were so long held, may have unfitted them for independence. It is quite uncertain whether the islands of Guernsey, Jersey, Sark, Alderney, and the Isle of Man, if constituted into a separate state, inde-

pendent of England, would prosper much in governing themselves. We know of no rules of political chemistry, by which the islands on the borders of a country can be selected as a test, and the capacity or incapacity of a people argued from that of the islands. Whether Greece, in its wide sense, consisting of all those parts, continental and insular, where the great majority of the people are Greeks, be prepared for independence, is a question wholly distinct from the character of the Ionian islands. If there be any correctness in what we have alleged in the commencement of these remarks, with regard to the present state of Greece, no doubt can remain on this point.

At any rate the Greeks, themselves, feel no doubt. They have taken the liberty, as we did in 1776, of declaring themselves free; they have raised armies and navies; they have defeated the Turks in several engagements, both at sea and on land; they have taken some of the most important fortresses, particularly Napoli di Romania, by its position and strength the most important of all; they have organized a system of government, which, though far from being faultless, is upon the whole a judicious system; and finally they have made such progress in the war, that a writer in the last number of the Quarterly Review, a journal not friendly to insurrection against masters, civilized or barbarous, has ventured to say, 'that it now appears extremely probable (we might indeed, we believe, use a still stronger expression) the Greeks will be able to establish their independence.'

As we do not remember to have seen the provisional constitution of the Greeks given at length in any of our journals or newspapers, and as it is a document of very considerable interest, we subjoin a translation of it, as we find it in French, in the *Courrier des Pays Bas* of the 11th and 12th of May, 1822, published at Brussels. The original Greek, with French and English translations, and preliminary historical notices, has been published both at Paris and London, but it has not been in our power to procure a copy of either of these works.

Provisional Constitution, published at Epidaurus, January 12, 1822.

CHAPTER I.—*Of Religion.*

ART. 1. The religion of the state is the orthodox religion of the Eastern [Greek] Church. At the same time all religions are tolerated, and their ceremonies permitted to be freely exercised.

CHAPTER II.—*Public Law of the Greeks.*

ART. 2. All natives of Greece professing the christian religion, are Greeks, and enjoy all political rights.

ART. 3. The Greeks are equal in the eye of the law, without distinction of rank or dignity.

ART. 4. Every stranger established or residing in Greece enjoys the same civil rights as the Greeks.

ART. 5. A law on naturalization shall immediately be published by the government.

ART. 6. All Greeks are eligible to any office—merit only determines the preference.

ART. 7. The property, honor, and security of every citizen, are placed under the safeguard of the law.

ART. 8. Contributions for the expenses of the state are to be apportioned according to the fortune of each person. No impost shall be established but by virtue of a law.

CHAPTER III.—*Form of Government.*

ART. 9. The Government is composed of two bodies; the Legislative Senate, and the Executive Council.

ART. 10. The two bodies must concur in the enactment of laws. Either may negative a law proposed by the other.

ART. 11. The legislative Senate is composed of members elected by the different provinces.

ART. 12. The number of Senators is to be determined by the law of elections.

ART. 13. The law of elections, which shall be published by the government, must require that the representatives shall be Greeks, and that they be thirty years of age.

ART. 14. The deputies of all the free provinces and islands of Greece, are admitted as soon as their powers are acknowledged valid by the Senate.

ART. 15. The Senate appoints its President and Vice-President annually, by a majority of votes, and

ART. 16. At the same time a First and Second Secretary, and Under-Secretaries.

ART. 17. The Senate is renewed every year.

ART. 18. The Executive Council is composed of five members, chosen from the Senate, and according to rules established by a special law concerning the formation of the Council.

ART. 19. The Council appoints annually its President and Vice-President, by a majority of votes.

ART. 20. It appoints eight Ministers, namely, an Arch-Chancellor of State, entrusted with foreign relations; Ministers of the

interior, of the finances, of justice, of war, of the marine, of worship, and of the police.

Art. 21. It appoints also to all the offices of the government.

Art. 22. The functions of the Senate continue but for a year.

CHAPTER IV.—*Of the Legislative Senate.*

Section 1.—*The Legislative Power of the Senate.*

Art. 23. Considering the urgent occasions of the State, the Legislative Senate continues its functions this year without interruption.

Art. 24. The President fixes the time of opening and determines the duration of the session.

Art. 25. In case of need, he may convoke an extraordinary meeting of the Senate.

Art. 26. In case of the absence of the President, the Vice-President shall perform his duties.

Art. 27. Two thirds of the members form a quorum of the Senate.

Art. 28. The decisions of the Senate are made by a majority of voices.

Art. 29. If equally divided, the President has a casting vote.

Art. 30. All the acts of the Senate are signed by the President and countersigned by the First Secretary.

Art. 31. The President transmits the doings of the Senate to the Council for their approbation.

Art. 32. If the council refuse its sanction, or propose amendments, the bill is returned to the Senate, with the grounds of refusal or the amendments proposed, to be discussed anew; after which, it is sent back to the council, to be definitively rejected or adopted.

Art. 33. The Senate receives and examines all petitions which are addressed to it, on whatever subject.

Art. 34. Every three months the Senate appoints as many committees as there are departments in the ministry.

Art. 35. One of these committees, according to the designation of the President, is attached to each branch of the public service, to propose laws relative to that branch.

Art. 36. Every member of the Senate may bring in a written project of a law, which the President refers to the proper committee.

Art. 37. The Senate receives the projects of law transmitted to it by the Executive Council, and approves, modifies, or rejects them.

Art. 38. Every declaration of war, and every treaty of peace, shall be submitted to the approbation of the Senate; and in general no treaty, which the Executive council shall make with a

foreign power, whatever be the subject, shall be binding, till approved by the Senate.

Truces and armistices of a few days duration, are not included in this provision.

Art. 39. At the beginning of each year, the Council submits to the approbation of the Senate an estimate of the expenses of the year, and of the means of meeting them. At the end of every year, also, it submits to the Senate an exact statement of receipts and expenditures.

Nevertheless, as circumstances render it impossible to prepare such a statement for the first year, the council shall supply the requisitions of the war and the other departments of the service, and submit to the Senate, at the end of the year, an exact account of receipts and expenditures.

Art. 40. The Senate approves or rejects the nominations to advanced military rank made by the Council.

Art. 41. It approves or rejects also the propositions made by the Council for the reward of distinguished civil and military services.

Art. 42. The Senate shall regulate the new monetary system, and the Council shall cause the coinage to be struck, in the name of the nation.

Art. 43. The Senate is expressly forbidden to approve any treaty, which is inconsistent with the political independence of the nation; and if it should come to its knowledge, that the Council has engaged in any criminal negotiation of this kind, it shall impeach the President thereof, and if found guilty, discharge him from his functions.

Art. 44. Journalists shall be permitted to attend all the meetings of the Senate, except those of the secret committees, which may take place whenever five members require it.

Section 2.—*Secretaries of the Senate.*

Art. 45. The First Secretary of the Senate, is charged with engrossing all the acts of this body, and with keeping an exact record of them.

Art. 46. He receives from the President the resolutions of the Senate, and transmits them to the council.

Art. 47. In the absence of the First Secretary the Second takes his place.

Section 3.—*Judicial Power of the Senate.*

Art. 48. If one or more of the members of the Senate be accused of political delinquency, a commission of seven members, named for this purpose by the Senate, will take cognizance of the accusation, and make report of it in writing. If the commis-

sion judge the accusation to be sustained, the Senate shall take up the affair. If the accused be condemned by a majority of two thirds of the voices, he shall be declared to have forfeited his dignity, and shall be remanded to the supreme court of Greece, to be judged as a simple citizen.

Art. 49. No Senator can be arrested, till after having been found guilty of an offence or of a crime.

Art. 50. When a member of the Executive Council shall be accused of a political offence or crime, the Senate shall appoint from its number a commission composed of nine members, who shall report conformably to the 48th article. If this commission sustain the accusation, and if the Senate, which in this case remains in possession of the affair, condemn the accused by a majority of four fifths of the voices, the President shall declare the accused to have forfeited his seat in the Council, and shall remand him to the supreme court of Greece as in article 48.

Art. 51. If a minister be accused of any offence or crime, he shall be judged according to the provisions of article 48.

CHAPTER V.—*Of the Executive Council.*

Section 1.—*Power of the Executive Council.*

Art. 52. The Executive Council, as a body, is inviolable.

Art. 53. If the entire body of the Council should become chargeable with a political offence or crime, the President shall be judged and punished, according to the 43d article; and after the nomination of a new President, the other members shall be separately proceeded against, according to the provisions of article 50.

Art. 54. The Council sees that the Ministers put the laws in force.

Art. 55. It sanctions or rejects the projects of law adopted by the Legislative Senate.

Art. 56. It proposes projects of law to the Senate for discussion. The Ministers have a right to be present at this discussion; and the Minister of the department, to which the subject of the law proposed belongs, shall always attend the discussion.

Art. 57. All acts and decrees of the Council are signed by the President, countersigned by the First Secretary, and sealed with the seal of state.

Art. 58. The Council disposes of the public forces by sea and land.

Art. 59. It shall have power to publish such instructions as it shall think proper, and to cause the laws, which concern the public order, to be enforced.

Art. 60. It shall have power, also, to take measures necessary

to the public tranquillity, in all the matters of police, provided it make report thereof to the senate.

Art. 61. It shall have power, with the consent of the senate, to make wars as well at home as abroad, and to pledge the public domains, for their payment.

Art. 62. It shall have power in like manner, with the consent of the senate, to alienate portions of the said public domains.

Art. 63. It shall appoint the ministers, and fix their powers.

Art. 64. The ministers are responsible for all the acts of their departments; consequently they cannot execute any act or decree contrary to the rights and duties proclaimed by the present act.

Art. 65. The council appoints all the agents of the government to foreign powers.

Art. 66. It must make report to the senate of its relations with foreign states and of the interior state of Greece.

Art. 67. It has the right of changing the ministers and all agents of whom it has the nomination.

Art. 68. In case of urgency, it may convoke an extraordinary session of the senate.

Art. 69. Whenever a crime of high treason shall have been committed, the council shall have the power to take such extraordinary measures as it shall judge necessary, whatever be the rank of the persons accused.

Art. 70. The council shall have power also, in this same case and if circumstances exact it, to make provisional nominations and promotions in military rank, which shall be submitted to the approbation of the senate, when tranquillity shall be restored.

Art. 71. In this case the council shall present to the senate, within two days, an exact and written report of the motives which have reduced it to the necessity of taking these extraordinary measures.

Art. 72. As it disposes of the forces by land and sea, the council shall have power in time of war to take extraordinary measures to provide quarters, provisions, clothing, and munitions, and every thing necessary to armaments by sea or land.

Art. 73. It shall present to the senate the project of a law with respect to the decorations to be given in recompense of services rendered to the country.

Art. 74. It is the duty of the executive council to keep up relations with foreign powers, and to undertake and pursue every species of negociation. But declarations of war and treaties of peace or others must be subjected to the approbation of the senate.

Art. 75. Nevertheless it can make all conventions of truce, of short duration, conformably to the 38th article, to be reported to the senate.

Art. 76. At the beginning of every year, it shall present to the senate an estimate, and at the end of every year an exact and detailed account of the revenues and expenses of the current year. These two accounts are prepared by the minister of finance, and accompanied by all the vouchers. Nevertheless, for this year, the accounts will be made up, as is provided in the 39th article.

Art. 77. The resolutions of the council are made by the majority of the voices.

Art. 78. In no case, and under no pretext, shall the council have power to enter into any negociation, nor to conclude any treaty, inconsistent with the political independence of the nation. In case of such a crime, the president of the council is proceeded against, displaced, and punished, as is provided in the 53d article.

Art. 79. The council shall propose a project of law, with respect to the uniform of the troops by sea and land.

Art. 80. It shall present another project of a law to regulate the pay of the troops by sea and by land, and to fix the salaries of all the officers of the government.

Section 2.—*Mode of Procedure against the Members of the Council.*

Art. 81. As soon as the accusation of a political offence, brought against a member of the council, has been admitted by the senate, the accused is deprived of his functions; the trial and judgment are conducted, as is provided in the 50th article.

Art. 82. No members of the council can be arrested, but in virtue of a condemnation; in case of the dismissal or absence of a counsellor, if the voices are divided in the deliberation, the voice of the president determines the majority.

Art. 83. An accusation against one or more ministers, admitted by the senate, involves their dismissal; and they shall be brought to trial conformably to the 51st article.

Art. 84. In case of crimes of high treason, the council shall have power to form, at the seat of government, a central and extraordinary commission, charged to take cognizance of those crimes, till the formation of the supreme tribunal of Greece.

CHAPTER VI.—*Of the Judiciary.*

Art. 85. The judiciary power is independent of the legislative and executive powers.

Art. 86. It is composed of eleven members elected by the Government, and who choose their president.

Art. 87. A law on the organization of the courts shall be published without delay.

Art. 88. This law shall fix the extent of their jurisdiction, and the general forms of procedure which are to be followed, in the conduct of trials.

Art. 89. This law shall be founded on the five following principles.

1st. A supreme tribunal shall be formed and established in the capital. This tribunal shall take cognizance, without appeal, of crimes of high treason and of offences against the safety of the state.

2d. Several tribunals shall be established in the capitals of the provincial governments. There shall be an appeal from the judgments of these tribunals to the supreme tribunal.

3d. There shall be established an inferior tribunal in every department. There shall be an appeal from their judgments to the general tribunal of the provincial capital. Inferior tribunals cannot take cognizance of political offences.

4th. There shall be established in every parish or village a justice of the peace, who shall take cognizance of every affair not exceeding the sum of a hundred piastres, and of all family differences.

5th. The justices of the peace can be accused before the tribunals of the department; those of the department before the tribunals of the capital; and those of the capital before the supreme tribunal.

Art. 90. The executive council is directed to form a commission composed of men distinguished alike by their understandings and their virtues, which commission shall be charged with the compilation of the laws that are to form the codes, civil, criminal, commercial, &c. These laws shall be submitted to the discussion and to the approbation of the senate and council.

Art. 91. Till the publication of these laws, judgment shall be rendered according to the laws of our ancestors, promulgated by the Greek Emperors of Byzantium, and according to the laws published by the present government. As to commercial affairs, the French code of commerce shall have the force of law in Greece.

Art. 92. The torture is abolished.

Confiscation is in like manner abolished for all citizens.

Art. 93. After the entire organization of the judiciary, no person can be arrested without the special order of the competent tribunal, except *in flagrante delicto.*

CHAPTER VII.—*Supplementary Articles.*

ART. 94. The provincial governments, established before the convocation of the national congress, are subjected to the authority of the supreme government.

ART. 95. Corinth is declared the seat of the provisional government. In case of a change made necessary by particular circumstances, this change is decided by the senate and council.

ART. 96. The seal of the state bears for an emblem Minerva ornamented with the symbols of wisdom.

ART. 97. The national colors, as well for the standards by land as for the flags by sea, are white and blue.

ART. 98. The arrangement of the colors in the formation of the standards and of the flags shall be determined by the council.

ART. 99. The government will take all measures for making a provision for the widows and orphans of the citizens who have died for their country.

ART. 100. It will also bestow honors and rewards on all brilliant actions, and on all distinguished services rendered to the country.

ART. 101. At the end of the war, it will likewise grant rewards to those, who shall have contributed to the regeneration of Greece by pecuniary sacrifices, and grant recompences to those whose generous efforts for this noble object may have reduced them to misfortune.

ART. 102. The present constitution shall be printed and distributed throughout Greece. The original shall be deposited in the archives of the legislative senate.

Given at Epidaurus the 1st (13th) of January, 1822, in the first year of Independence.

Such is the constitution which has been established in Greece. It immediately went into operation by the choice of Prince Mavrocordato as President, and Prince Mavromichalis, whom we shall again have occasion to mention, as Vice-President of the executive council. The present year the latter distinguished individual has been raised to the presidency of the council, and the seat of government has been fixed at Tripolizza, the residence under the Turks of the Pacha of the Morea. That the change in the person of the president of the conncil has not been the consequence of any dissension, is apparent from the honorable manner in which the venerable Mavromichalis is mentioned, in the circular letter of Prince Mavrocordato, his predecessor, addressed to the Philellenic Societies of Germany aud Switzerland. The same letter, be-

ing of the date of April 22, 1823, gives an encouraging view of the state of things in Greece, and shows the independent government of that country to be in a state of entire organization. In this state of things, and in consideration of the circumstances mentioned above, what course of conduct ought to be pursued by the nations of the earth? On this question we beg leave to add a few words. We have already expressed our opinions, as to what we think an enlightened policy demands of the states of Europe. We will not enlarge upon this part of the subject; though we cannot but think that a more general opinion never existed in the civilized world, than that the Greeks ought to be aided in this conflict. Such a measure would do not a little toward reconciling the minds of men to the unprincipled policy, which has been pursued towards Naples and Spain; and it is not yet perhaps too late, by a work of imperial magnanimity towards Greece, to purchase the world's forgiveness of the partition of Poland. As to our own country, we think, the course our government should adopt, sufficiently indicated by its own conduct towards South America. If more accurate information of the state of Greece is wanted, let the president do as he did in 1817, when he dispatched a public vessel with a respectable commission to enquire into the progress of the revolution in that country. We have always a fleet in the Mediterranean; let a similar commission be directed to repair to it, and on board of one of its vessels visit the principal ports of Greece, ascertain the progress of the war, and the degree of organization of the government. Should they report, as they must, for they are well known facts, the circumstances which we have enumerated, then let the independence of Greece be acknowledged by the United States, and a minister sent to their government.

Such a measure will be peculiarly in character for this country. The case is far clearer than that, to say the least, of Mexico; and we have no treaties with the Turk to impose restraint upon us. America has already been called on by the Greeks to adopt such a course. More than two years have elapsed since a proclamation of the senate of Calamata signed by its president, the same individual who has since been elected chief of the Grecian confederacy, addressed to the American nation, was enclosed to the editor of this journal,

accompanied by a private letter to him.* The proclamation and the letter were both in the handwriting of Dr Coray, the former being a copy from the original published at Calamata, and the latter subscribed by a venerable individual, P. Epites, who had been sent, at that time, to Paris, to endeavor to awaken a sympathy in civilized nations in the affairs of Greece, and by three other respectable Greeks, among whom is Dr Coray. A translation of this proclamation was published in the newspapers of the day. But we have thought it would not be improper to insert it again, in this connection, with the original, which has never before been published.

(Αντίγραφον.)

Ἄνδρες τῆς Ἀμερικανῆς Συμπολιτείας!

Ἀποφασίζοντες νὰ ζήσωμεν ἢ ν' ἀποθάνωμεν διὰ τὴν ἐλευθερίαν, συρόμεθα πρὸς ἐσᾶς ἀπὸ δικαίαν συμπάθειαν· διότι εἰς τὸν τόπον σας ἐδιάλεξε νὰ κατοικῇ ἡ ἐλευθερία, ἀπὸ μόνους ἐσᾶς λατρευομένη καθὼς ἐλατρεύετο ἀπὸ τοὺς πατέρας μας. Ὅθεν ἐπικαλού-

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* The interesting nature of the subject has induced us to subjoin the letter referred to.

Κύριε Ἐβερέττε!

Ὡς πολίτην ἐλευθέρου πολιτείας καὶ φιλελεύθερον, ὡς ἑλληνιστὴν σοφὸν καὶ φιλέλληνα, σὲ γράφομεν παρακαλοῦντές σε νὰ ἐκδώσῃς τὴν πρὸς τοὺς συμπολίτας σου πρόσκλησιν τῶν Ἑλλήνων. Δὲν ἀμφιβάλλομεν ὅτι ἡ εὐγενής σου ψυχὴ, μὴ ἀρκουμένη εἰς τοῦτο, θέλει φιλοτιμηθῇ νὰ μεταδώσῃ εἰς ὅλην τὴν Ἀμερικανὴν συμπολιτείαν τὸν θερμὸν ὑπὲρ τοῦ Ἑλληνικοῦ γένους ζῆλον, ἀπὸ τὸν ὁποῖον φλίγεται. Ἀπὸ τὸν νέον κόσμον προσμένει ἡ ἀνθρωπότης τὴν ἀνακαίνεσίν της· πλὴν ἂν εἰς ἄλλους ἀρκῇ τὸ παράδειγμά σας, εἰς ἡμᾶς καὶ ἡ συνέργειά σας εἶναι κατὰ τὸ παρὸν ἀναγκαία. Ὦ πόσον ἔνδοξον θέλει εἶσθαι εἰς τὴν πατρίδα σου νὰ συνδράμῃ εἰς ἐλευθέρωσιν τῶν Ἑλλήνων, ἐν ᾧ αἱ ἄλλαι δυνάμεις μένουν ἀναίσθητοι εἰς τὴν φωνὴν τῆς δικαιοσύνης, τῆς θρησκείας καὶ φιλανθρωπίας! Μόνον ἡ ἐκ τοῦ τοιούτου ἔργου δόξα ἤθελεν ἐξαρκέσει εἰς ἀνταμοιβήν της· ἀλλ' οἱ Ἕλληνες ποτὲ δὲν ἐφάνησαν ἀχάριστοι, καὶ ποτὲ δὲν ἔστερξαν νὰ μείνωσι κατώτεροι κατὰ τὴν γενναιότητα. Καθὼς ἄλλοτε ἐστεφάνωσαν τὰς φιλίους πόλεις μὲ χρυσοῦς στεφάνους, καὶ ἐτίμησαν μὲ προεδρίας εἰς τὰς συνελεύσεις καὶ τοὺς ἀγῶνας, οὕτω πάλιν θέλουν τιμᾷ καὶ στεφανόνει τοὺς φίλους αὐτῶν καὶ συμμάχους.

Εἴθε, ὦ σοφὲ ἄνερ, ν' ἀξιωθῇ ἡ Ἑλλὰς νὰ σὲ ἀπολαύσῃ πάλιν ὄχι δακρύοντα ἀπὸ λύπην διὰ τὴν πτῶσίν της, ἀλλὰ φαιδρὸν καὶ περιχαρῆ διὰ τὴν ἀνάστασιν αὐτῆς καὶ εὐδαιμονίαν.

Ἐν Παρισίοις, κζ' Ἰουλίου, ᾳωκά.

Π. Ἠπίτης,
ἀποσταλμένος τῶν
Ἑλλήνων στρατηγῶν.

Α. Κοραῆς.
Α. Βογορίδης.
Ν. Πίκκολος.

μενοι τὸ ὄνομα αὐτῆς ἐπικαλούμεθα ἐν ταὐτῷ τὸ ἐδικόν σας, πεποιθότες ὅτι μιμούμενοι ἐσᾶς θέλομεν μιμηθῆ τοὺς προγόνους μας, καὶ δειχθῆ ἄξιοι ἐκείνων, ἂν φθάσωμεν νὰ σᾶς ὁμοιάσωμεν.

Αἱ ἀρεταί σας, ὦ Ἀμερικανοὶ! μᾶς προσεγγίζουν εἰς ἐσᾶς, μ' ὅλον ὅτι μᾶς χωρίζουν εὐρύταται θάλασσαι. Ἡμεῖς σᾶς νομίζομεν πλησιεστέρους παρὰ τὰ γειτονεύοντα μὲ ἡμᾶς ἔθνη, καὶ σᾶς ἔχομεν φίλους καὶ συμπολίτας καὶ ἀδελφοὺς, διότι εἶσθε δίκαιοι, φιλάνθρωποι καὶ γενναῖοι. Δίκαιοι, ὅτι καὶ ἐλεύθεροι· φιλάνθρωποι καὶ γενναῖοι, ὅτε πολιτεύεσθε κατὰ τὸ εὐαγγέλιον. Ἡ ἐλευθερία σας δὲν ἐπιστηρίζεται εἰς ἄλλων ἐθνῶν δουλείαν, οὔτε ἡ εὐδαιμονία σας εἰς ξένας συμφορὰς καὶ ταλαιπωρίας· ἀλλ' ἐξ ἐναντίας, ἐλευθέρως καὶ εὐτυχῶς ζῶντες ἐπιθυμεῖτε νὰ μετέχωσιν ὅλοι οἱ ἄνθρωποι ἀπὸ τὰ αὐτὰ ἀγαθὰ, καὶ ν' ἀπολαύωσιν ὅσα δικαιώματα ἡ φύσις εἰς ὅλους ἐξίσου ἐμοίρασεν. Ἐσεῖς πρῶτοι ἐκηρύξατε τὰ δικαιώματα ταῦτα, καὶ πάλιν πρῶτοι ἐσεῖς τὰ ἐσεβάσθητε, ἀποδίδοντες εἰς τοὺς ἀποκτηνωμένους Ἀφρικανοὺς ἀνθρώπινον ἀξίωμα. Κατὰ τὸ παράδειγμά σας κατέλυσεν ἡ Εὐρώπη τὴν αἰσχρὰν ἐκείνην καὶ ἀπάνθρωπον σωματεμπορίαν, καὶ ἀπὸ ἐσᾶς ἀκόμη διδάσκεται δικαιοσύνην, καὶ μανθάνει νὰ καθαιρῇ ἀτόπους ἢ θανατηφόρους συνηθείας. Ἡ δόξα αὕτη, Ἀμερικανοὶ! εἰς μόνους ἐσᾶς ἀνήκει, καὶ σᾶς ἀνυψόνει ὑπεράνω ὅλων τῶν φημισθέντων διὰ τῆς εὐνομίας καὶ ἐλευθερίας ἐθνῶν.

Ὑμέτερον εἶναι, ὦ ἄνδρες! νὰ ἐπιθέσετε τὸν κολοφῶνα εἰς τὴν δόξαν σας, βοηθοῦντές μας νὰ καθαρίσωμεν τὴν Ἑλλάδα ἀπὸ τοὺς μολύνοντας αὐτὴν ἐκ τετρακοσίων ἐτῶν βαρβάρους. Ἄξιον ὑμῶν ἀναντιρρήτως εἶναι νὰ πληρώσετε τῶν πολιτισμένων λαῶν τὸ χρέος, νὰ διώξετε τὴν ἀμάθειαν καὶ τυραννίαν ἀπὸ τὴν πατρίδα τῶν τεχνῶν καὶ τῆς ἐλευθερίας. Δὲν θέλετε μιμηθῆ βέβαια τὴν ἀξιοκατάκριτον ἀδιαφορίαν, ἢ μᾶλλον πολυχρόνιον ἀχαριστίαν τινῶν Ἐυρωπαίων. Ὄχι, ὁ λαὸς τοῦ Γουλιέλμου Πέννου, τοῦ Βασίχθονος καὶ τοῦ Φραγκλίνου δὲν θέλει ἀρνηθῆ βοήθειαν εἰς τοὺς ἀπογόνους τοῦ Φωκίωνος, τοῦ Θρασυβούλου, τοῦ Ἀράτου, τοῦ Φιλοποίμενος. Ἐσεῖς ἐδείξατε ἤδη πρὸς αὐτοὺς τιμὴν κ' ἐμπιστοσύνην, πέμποντες τὰ τέκνα σας εἰς τὰ σχολεῖα των. Ἠξεύρετε μὲ ὁποίαν ἀγαλλίασιν τὰ ὑπεδέχθησαν, καὶ τὴν σταθερὰν πρὸς αὐτὰ εὔνοιαν ἐκείνων καὶ περιποίησιν. Ἀλλ' ἂν οὕτως ἔπραξαν δεδουλωμένοι, μὲ πόσην φιλίαν καὶ ζῆλον θέλουν φέρεσθαι πρὸς ἐσᾶς, ὅταν διὰ τῆς συνεργείας σας συντρίψωσι τὰς ἁλύσεις των; Ἡ Ἑλλὰς τότε θέλει σᾶς δίδει κέρδη, τὰ ὁποῖα μάτην ἠθέλετε προσμένει ἀπὸ τυφλοὺς καὶ ἀγρίους δεσπότας. Οἱ δεσμοὶ τῆς ἀδελφότητος καὶ τῆς εὐγνωμοσύνης θέλουν ἑνόνει διὰ παντὸς τοὺς Ἕλληνας μὲ τοὺς Ἀμερικανούς. Τὰ συμφέροντα ἡμῶν εἶναι τοιαῦτα, ὥστε νὰ δυναμόνουν πάντοτε τὴν πρὸς ἀλλήλους συμμαχίαν, θεμελιωμένην εἰς τὴν ἐλευθερίαν καὶ τὴν ἀρετήν.

Ἐν Καλαμάτᾳ, 25 Μαΐου, 1821.

Ὑπογεγρ: Ἡ Μεσσηνιακὴ σύγκλητος ἡ ἐν Καλαμάτᾳ.
Πέτρος Μαυρομιχάλης, ἀρχιστράτηγος.

Translation.

To the citizens of the United States of America.—Having formed the resolution to live or die for freedom, we are drawn toward you by a just sympathy; since it is in your land that Liberty has fixed her abode, and by you that she is prized as by our fathers. Hence, in invoking her name, we invoke yours at the same time, trusting that in imitating you, we shall imitate our ancestors, and be thought worthy of them if we succeed in resembling you.

Though separated from you by mighty oceans, your character brings you near us. We esteem you nearer than the nations on our frontiers; and we possess, in you, friends, fellow-citizens, and

brethren, because you are just, humane and generous;—just because free, generous and liberal because christian. Your liberty is not propped on the slavery of other nations, nor your prosperity on their calamities and sufferings. But, on the contrary, free and prosperous yourselves, you are desirous that all men should share the same blessings; that all should enjoy those rights, to which all are by nature equally entitled. It is you, who first proclaimed these rights; it is you who have been the first again to recognise them, in rendering the rank of men to the Africans degraded to the level of brutes. It is by your example, that Europe has abolished the shameful and cruel trade in human flesh, from you that she receives lessons of justice, and learns to renounce her absurd and sanguinary customs. This glory, Americans is yours alone, and raises you above all the nations which have gained a name for liberty and laws.

It is for you, citizens of America, to crown this glory, in aiding us to purge Greece from the barbarians, who for four hundred years have polluted the soil. It is surely worthy of you to repay the obligations of the civilized nations, and to banish ignorance and barbarism from the country of freedom and the arts. You will not assuredly imitate the culpable indifference or rather the long ingratitude of some of the Europeans. No, the fellow-citizens of Penn, of Washington, and of Franklin, will not refuse their aid to the descendants of Phocion, and Thrasybulus, of Aratus, and of Philopœmen. You have already shown them esteem and confidence in sending your children to their schools. You know with what pleasure they were welcomed, and the steady kindness and attentions which they received. If such has been their conduct when enslaved; what friendship and zeal will they not manifest to you, when through your aid they shall have broken their chains. Greece will then furnish you advantages, which you can in vain seek from her ignorant and cruel tyrants; and the bands of gratitude and fraternity will forever unite the Greeks and the Americans. Our interests are of a nature more and more to cement an alliance founded on freedom and virtue.

At Kalamata, May 25, 1821.

Signed, The Messenian Senate at
Calamata.
Peter Mavromichalis, commander in chief.

Our readers will observe that this proclamation is the act of the Senate of Calamata, one of those local assemblies which were organized in Greece, at the commencement of the present struggle, and before the establishment of the general government. Calamata is in that part of the Peloponessus which is

inhabited by the Mainotes, and till the late revolution was governed by princes of its own, under a merely nominal subjection to the Porte. Peter Mavromichalis (Black Michael) president of this local senate is one of the most distinguished individuals of Greece, and has long, as Bey of Maina, been the ruler of his countrymen, the Mainotes. His age, his integrity, his wealth and public spirit, have given him the greatest influence in the new government of Greece, and as we have already had occasion to mention, he is now the president of the executive council. Though we do not consider the foregoing address to be in very good taste, nor in every part perfectly intelligible, it shows at least how soon and how spontaneously the eyes of Greece were turned to this country as the great exemplar of states in the agonies of contest for independence. Such an appeal from the anxious conclave of self-devoted patriots, in the inaccessible cliffs of the Morea, must bring home to the mind of the least reflecting American, the great and glorious part, which this country is to act, in the political regeneration of the world. It must convince us that what Burke originally said in eulogy of his own land, is going into its literal fulfilment here; and in a wider sense than he dared to speak it. Wheresoever the chosen race, the sons of liberty, shall worship freedom, they will turn their faces to us.—We have seen, in our own days, the oldest and most splendid monarchy in Europe, casting off its yoke, under the contagion of liberty caught from us; and why should the excesses of that awful crisis be ascribed to the new found remedy rather than to the inveterate disease? Through France, the influence of our example has been transmitted to the other European states, and in the most enslaved and corrupted of them, the leaven of freedom is at work. Meantime, at one and the same moment, we perceive in either hemisphere the glorious work of emancipation going on; and the name and the example of the United States alike invoked by both. From the earliest abodes of European civilization, the venerated plains of Greece, and from the scarcely explored range of the Cordilleras, a voice of salutation and a cry for sympathy are resounding in our ears. While the great states of Europe, which for centuries have taken the lead in the affairs of the world, stand aghast at this spectacle, and know not if they shall dare to sanction what they cannot oppose, our envoys

have already climbed the Andes and reached the Pacific, with the message of gratulation. We devoutly trust that another season will find them on their way to Greece. The recognition of South American Independence, in many respects of national policy a dubious measure, was adopted with the cheering unanimity of old revolutionary times; and the man who was not in his seat in Congress that day, felt that he had done himself and his constituents a wrong, in losing the opportun ty to record his voice among those of his brethren. Not less popular, we venture to say, would be the recognition of the Independence of Greece. We feel none of the scruples, which perplex the cabinets of Europe. We see nothing but an enterprising, intelligent, christian population struggling against a ghastly despotism, that has so long oppressed and wasted the land; and if an animating word of ours could cheer them in the hard conflict, we should feel that not to speak it, were to partake the guilt of their oppressors.

Meantime there is something for the people of this country in their private capacity, to do for Greece. In Germany, and in France, large numbers of enthusiastic young men have devoted themselves personally to the cause, and flocked to Greece, as the same class of generous spirits did to this country, in the revolutionary war. Considerable sums of money have also been raised in those countries, and supplies of arms and ammunition sent to the Grecian armies. In England a benevolent association has been formed under the presidency of Lord Milton, a nobleman of one of the wealthiest and most powerful British families; and this association has entered into a correspondence with the Grecian authorities. Local political dissensions have unfortunately mingled themselves with the counsels adopted in England for the relief of the Grecians. Still, however, large subscriptions have been made and forwarded to that country. We are sorry for the fact, that America did not set this example also. The experience of our own revolutionary war is so recent, that we ought to have felt, how precious would be any aid from a distant land, however insignificant in amount. Who does not know that there were times in our own revolutionary war, when a few barrels of gunpowder, the large guns of a privateer, a cargo of flour, a supply of clothing, yea, a few hundred pairs of shoes, for feet that left in blood the tracks of their march, would have

done essential service to the cause of suffering liberty. We perceive that the writer of an article, already quoted, in the Quarterly Review, observes 'that £200,000 would hardly afford a week's relief to the numerous applicants, and if laid out in the purchase of military stores, might be lost in the course of a single siege or battle.'—True, and what may not be gained in a single siege or battle? The surprize of nine hundred Hessians, by Gen. Washington, traced in all its consequences upon the public feeling, at a time when despondency was curdling the blood of the people, did as much for the revolutionary cause, as could have been done by the most brilliant campaign, between well appointed armies. Besides, it is not merely the amount of physical aid, derived from foreign contributions, that serves the cause. There is an animation produced in these perilous struggles of a resolute few against a barbarous host, at feeling that their efforts are observed with sympathy by others; that they are not toiling and bleeding without an eye to witness or a heart to feel for them. We have no doubt in the world, that many small and gallant bands in the mountain passes of Greece; in the heights of Pindus, the narrow defiles in Parnassus, between Thessaly and Phocis, and at the isthmus of Corinth, who are holding out against all the difficulties of an ill appointed and scarcely organized force, would endure the longer and dare the more, and each in its sphere help on the struggle to a happy issue, could they cherish with them in their perilous holds, the hope that the prayers of the distant friends of liberty were offered up in their behalf, and that their contributions, however small, would not be withheld in an extreme hour. He does not know the human heart, that cannot do justice to these considerations.

America has done something for Greece. Our missionary societies have their envoys to the Grecian church, with supplies of bibles and religious tracts for their benighted flocks. But in the present state of this unhappy people, this is not the only succor they require. They are laying the foundations of civil freedom, without which even the blessings of the Gospel will be extended to them in vain; and while they are cementing with their blood this costly edifice, they are in the condition of the returning Jews, of whom 'every one with one of his hands wrought at the work, and with the other hand held a weapon.' We would respectfully suggest to the enlarged

and pious minds of those, who direct the great work of missionary charity, that at this moment, the cause of the Grecian church, can in no way be so effectually served, as by contributions directed to the field of the great struggle. The war is emphatically a war of the crescent against the cross. The venerable patriarch of the Greek faith, torn from his altar and hanged at the portals of his church, gave the signal of the unholy outrages which were to waste his flock. And now wherever the armies of the Sultan prevail, the village churches are levelled with the dust or polluted with the abominations of mahometanism, and the religious houses of the Greeks, the oldest abodes of christianity in the world, are wasted with fire, and the sacred volume thrown out to be trampled under foot by barbarians. At this crisis the messenger of the gospel fraternity should come in other guise than the distributer of the word; and could the broad and deep current of religious bounty be turned into a channel to reach the seat of the principal distress, it is not going too far to say, that it might be the means of giving another independent country to the church of Christ; and do more to effect the banishment of the crescent to the deserts of Tartary, than all that has yet been achieved by the counsels of christendom.

The same considerations call upon our wealthy citizens to extend their aid to the citizens of a country possessed of more than one bond of community with ours. The common council of London have voted £1000 for the relief of the sufferers in Greece. Let Boston appropriate ten thousand dollars for the same object; New York, and Philadelphia, and Baltimore, and the cities of the South in proportion to their means, will heartily unite in the cause; and a sum of money may be transmitted to Greece, either directly or through the English committee, which will teach those who are now toiling and bleeding for freedom, that we prize the blessing too highly, not to aid them in attaining it. We have seen on the wharfs of Boston, the household utensils of brass and copper, gathered up from the desolate hearths of the butchered Sciotes, bought as old copper in Smyrna, and as such sent to this country. Does not this bring home to our minds a picture of distress to awaken our deepest sympathy? To see reduced to old copper in our stalls, the furniture of the firesides of men and christians, who have themselves wearied the Turkish scimetar

in their slaughter, and whose wives and daughters have been sold into an accursed slavery, to the number of thirty thousand? We know not whether the sight of these humble wrecks of household existence be romantic enough for the sentimentalist; but we ask our readers by an effort of imagination, to make the case their own; to fancy an overwhelming force of barbarians, speaking another language, following a strange faith, let loose upon one of our largest cities, (for Scio, now a desert, had a population of 100,000), to put its men to the sword, and sell its matrons and virgins in the open market, into the most revolting and hopeless slavery. We would ask our readers but to conceive of a fate like this, as in reserve for one of the cities of our own country, and then say what claim the Greeks have on our sympathy.

In the few remarks, which we have taken the liberty to make on this occasion, we have not insisted on the topic of the glorious descent of the Greeks; of the duty of hastening to the succor of those whose fathers were the masters of the world, in the school of civilization. It is not because we are not sensible of the power of this appeal also; but because we think a much stronger appeal may be made. To take an interest in the fate of a people, whose ancestors fill so important a place in the history of the world and of the human mind, is certainly natural. The geographical names, which fill the accounts from Greece, excite an interest of themselves; and we feel a double eagerness to hear that the Turks have not only been beaten, but beaten out of the Acropolis of Athens; and that Odysseus is still successful on the sides of Œta. While, however, this kind of sympathy is perfectly natural, and nothing ought to be neglected, which helps the cause of a suffering people, we believe the Greeks have stronger and more imperious claims upon us, than any that grow out of these associations. We may differ as to the degree of respect, to which their ancestors are entitled. We may differ as to the degree, in which the modern Greeks are really the descendants of the ancient inhabitants of the soil; and more than one traveller thinks he has settled the question, whether the Turks have a right to hold the inhabitants of Greece in bondage, by maintaining that the Greeks are a mingled race, descended from the barbarians who in different ages have overrun the land. The allusion to antiquity, moreover, often borders on the ridic-

ulous, and we entirely agree with Dr Coray, in condemning the name of *Areopagus*, as given to the judiciary of the new state. This revival of classical names, in an application totally different, was one of the practices in bad taste which prevailed in the French revolution, and though more excusable in Greece, is better avoided there. There is enough without these names to awaken our sympathy. They derive their power from book learning, they belong to scholars and to dilettanti; but there is that in the cause of the Greeks, which ought to speak to the heart of every freeman, in Europe and America. It is not merely the countrymen of Aristides, the fellow-citizens of Phocion, the descendants of Aratus, that are calling upon us. These glorious names are a dead letter to two thirds of the community of christendom. But it is christians bowed beneath the yoke of barbarous infidels; it is fathers and mothers condemned to see their children torn from them and doomed to the most cruel slavery; it is men like ourselves bereft of all the bounties which providence has lavished on their land, obliged to steal through life, as through the passes of a mountain before the blood-hounds of the pursuer.—No exhilarating prospect of public honor; no cheering hope of private success in life; no thrill at the name of country; no protection at the fireside; but all one blank of leaden, dreary despotism, which turns the very virtues and excellencies of character into a crime. It is the great curse of a despotism like that of the Turks, that it inverts the laws of conduct for its subjects, and connects suffering and death with those principles and actions, to which providence attaches the rewards of life in a healthy state of society. We are able to pity individuals among us, so unfortunately born and bred, as to be surrounded with corrupting examples, and taught to find occupation and pleasure in vice. What a spectacle do not the Greeks present in this connection, to the practical philanthropist! Are they zealous in the profession of their religion and in the observance of its rights, they jeopardize the continuance of the jealous and contemptuous toleration beneath which they live. Do they love and serve the land of their birth, they are guilty of treason against its barbarous master. Do they with industry and enterprize acquire wealth, it is necessary studiously to conceal it from unprincipled extortion, and to invest it in foreign countries. Do they found schools and make provision for education, they expose them-

selves to exaction and their children to outrage, and are obliged to proceed with the greatest possible secrecy and circumspection. What a monstrous complication of calamity, to have the best, the worthiest, the purest designs and actions, loaded with all the consequences of vice and crime; to be deprived not only of all that makes life joyous, but to be punished for doing well, and to be forced to go privately about those good deeds, to which men, in other countries, are exhorted as to a source of praise and honor. These things ought to be considered; and a reprehensible apathy prevails as to their reality. If liberty, virtue, and religion, were not words on our lips, without a substance in our hearts, it would be hardly possible to pursue our little local interests with such jealousy; to be all on fire in one state, for fear Congress should claim the power of internal improvements, and up in arms in another against a change of the tariff, and carried away in all, with a controversy between rival candidates for an office, which all would administer in much the same way; if a narrow selfishness did not lie at the bottom of our conduct, we could not do all this, while men, christians as good as we, who have nerves to smart, minds to think, hearts to feel, like ourselves, are waging unaided, single-handed, at perilous odds, a war of extermination against tyrants, who deny them not only the blessings of liberty, but the mercies of slavery.

But we hope better things of our country. In the great Lancastrian school of the nations, liberty is the lesson, which we are appointed to teach. Masters we claim not, we wish not, to be, but the Monitors we are of this noble doctrine. It is taught in our settlement, taught in our revolution, taught in our government; and the nations of the world are resolved to learn. It may be written in sand and effaced, but it will be written again and again, till hands now fettered in slavery shall boldly and fairly trace it, and lips, that now stammer at the noble word, shall sound it out in the ears of their despots, with an emphasis to waken the dead. Some will comprehend it and practice it at the first; others must wrestle long with the old slavish doctrines; and others may abuse it to excess, and cause it to be blasphemed awhile in the world. But it will still be taught and still be repeated, and must be learned by all; by old and degenerate communities to revive their youth; by springing colonies to hasten their progress. With the ex-

ample before them of a free representative government—of a people governed by themselves,—it is no more possible that the nations will long bear any other, than that they should voluntarily dispense with the art of printing or the mariner's compass. It is therefore plainly no age for Turks to be stirring. It is as much as men can do, to put up with christian, with civilized, yea, with legitimate masters. The Grand Seignior is a half-century too late in the world. It requires all people's patience to be oppressed and ground to the dust, by the parental sway of most faithful, most catholic, most christian princes. Fatigued as they are with the Holy Alliance, it were preposterous to suppose they can long submit to a horde of Tartarian infidels. The idea that the most honorable, the most responsible, the most powerful office in the state, can, like a vile heirloom, follow the chance of descent, is quite enough to task the forbearance of this bold and busy time. What then shall become of viziers and sultans, when ministers are bewildered in their cabinets, and kings are shaken on their thrones? Instead of arming their misbelieving hosts against a people, who have taken hold of liberty, and who will be free, let them rejoice that great and little Bucharia are still vacant, and take up their march for the desert.

Art. XXI.—*Considérations sur l'Industrie et la Législation sous le Rapport de leur Influence sur la Richesse des Etats, et Examen critique des Principaux Ouvrages, qui ont paru sur l' Economie Politique, par Louis Say, de Nantes.* Paris, 1822. 8vo.

Mr Louis Say, the author of this treatise, is the brother of Mr J. B. Say, whose book on political economy, is generally regarded as the most valuable elementary work on that subject. Mr Louis Say has already published a work entitled 'Principal causes of the wealth of nations and individuals,' which we have not had the good fortune to see, and which in the course of the treatise now before us, he defends against some objections on the part of his brother J. B. Say. Mr Louis Say, at the close of his introduction, modestly claims

indulgence for his work, 'as not being the production of a man of letters, but of a merchant resident in a sea port, which,' adds he, 'will not in the eyes of many persons be any objection to the work.' It is certainly none in ours. Nothing is more interesting to those, who pursue the study of political economy, than to compare the statement of intelligent merchants, manufacturers, and farmers, with the principles of the science. Nay, more, it is on an accurate and extensive acquaintance with the facts, which it is the business of the merchant, manufacturer, and farmer to observe, that we must depend for the solidity of the theories on the production, distribution, and consumption of national wealth. Besides the interest which naturally attaches to the writings of practical men, on the subjects with which they are respectively conversant in political economy, there have been several examples of individuals, particularly of the mercantile profession, who have acquired reputation as writers on the science in general. The larger number, however, of approved writers on political economy have not been men actually engaged in either of the great pursuits; and it may well be doubted whether either of them is remarkably favorable to the formation of a political economist. It is scarcely possible that the merchant, the manufacturer, and the farmer, should not be respectively not only acquainted almost exclusively with the details of his own pursuit, but more or less biassed in favor of the system, in which that pursuit plays the first part. There is nothing in political economy itself, which requires a practical man, in the common acceptation of the term. If there were, it is plain that the science could not exist, for no such individual could be found on earth. There are practical merchants, and practical farmers, and practical manufacturers; but we presume there are no persons in society who are all three at once, to any considerable degree. It must not, therefore, be demanded of the political economist, that he be practically concerned in all the great forms of acquiring, accumulating, and consuming wealth. The very fact that the political economist must be equally versed in all these pursuits, proves that he cannot, according to the common course of things, be *practically* engaged in either. To the justice of this remark in Europe, few we think will object, who are acquainted with the structure of European society. Here in America, the class of professed philosoph-

ical writers cannot be said to exist, and the duty of directing the opinions of their fellow-citizens on all subjects necessarily devolves on some class of professional or practical men.

Besides this necessity of the case, our merchants are a class of men in general, most interested in manufacturing establishments; and the most extensive agricultural improvements have, also, in the northern and eastern states, been made by those, who, in earlier life, were employed in commerce. The agriculture of the great planters at the south is indeed an independent pursuit, but, as is judiciously observed by Mr Webster, in his discourse at Plymouth, of the agriculture of the West Indies, it is in its leading features of the nature of commerce, dealing in the exchange of large masses of staple products. It is accordingly not uncommon to meet with intelligent individuals in this country, who are in reality acquainted, as practical men, with two, if not with three, of the great pursuits in question, to a degree beyond what is often observed in Europe, where the partition walls among the different vocations in society, are much more lofty and solid than with us. And yet, notwithstanding this favorable circumstance for the formation, in this country, of what might be called a class of practical, political economists, it is the lawyers upon whom the task generally devolves of writing and speaking on the subject; and who, from Mr Hamilton down to Mr Baldwin, have done the most to give a direction to public opinion, on this subject. As political economy is purely a speculation, there is no wonder that it should have fallen into the hands of that profession, whose business it is to reduce all the affairs of life to principle, and to unfold, in the perplexed tissue of affairs, the abstract rule, by which they are to be settled. There is perhaps no study whose materials are to be drawn from out of doors life, of which the principles are more abstruse than political economy; and when we add to this the very extensive range from which these materials are to be gathered, it will not be wondered at that they require to be collected and digested, not in the walks of business, but in the solitude of meditation.

We make not these remarks in disparagement of the efforts of Mr Louis Say, who evinces a powerful mind, and who has evidently employed the intervals of his leisure in a profound study of the science, on which he has written. The treatise before us is of a critical nature. It passes in review the sys-

tems of the most distinguished political economists, from that of Dr Quesnai down to that of the Vicomte de Saint Chamans, an author whom we shall presently introduce to the notice of our readers and the admiration of one portion of the political economists of the United States. Mr Louis Say successively treats of some of the principles and theories unfolded in the works of Quesnai, Dupont de Nemours, Adam Smith, (to whom one of the longest chapters is devoted,) of Mr Canard, the Earl of Lauderdale, of Mr Ganilh, of Mr Ricardo, (whose views are also investigated at length,) of Mr Malthus, of J. B. Say, of Destutt de Tracy, and finally of the Vicomte de Saint Chamans. The work of our author being itself of a critical nature, and it being really necessary to put some limit to the range of reviewing, we shall not think of going into an examination of all its parts. We shall content ourselves with selecting as a specimen of Mr Say's criticism, his remarks on *the division of labor*, as explained by Adam Smith, and shall then borrow from him an account of the last named author, the Vicomte de Saint Chamans.

One of the greatest tributes to the merit of Adam Smith may be found in the numerous criticisms made upon him by his successors; criticisms, which have resulted in pointing out some errors. In the first attempt to constitute political economy into a science, it is no disparagement to say that errors have crept into his work; while the care and the acumen, which succeeding writers have bestowed on the *Wealth of Nations*, prove that the reputation of Adam Smith has not sustained itself, through the blindness and indifference of those who have followed him. No subject in this most sharp-sighted age, has been so keenly scrutinized as the wealth of nations, and no philosopher who wrote seventy years ago, has so well maintained his reputation as Adam Smith. The vehemence, not to say passion, with which he has been lately assailed in this country, leads us, before quoting Mr Say's observations, to remark that the work of Adam Smith was closely studied by those immortal statesmen, who framed the American Constitution. Mr Gallatin, in his profound discourse on the finances of the United States,* expresses the opinion, that in the provision relative to direct taxation, the very words of Adam Smith, in a sense, according to

* A Sketch of the Finances of the United States, by Albert Gallatin. New-York, 1796.

Mr Gallatin, peculiar to that philosopher, are made use of by the framers of the constitution. Whoever will compare the first portion of Mr Hamilton's report on Manufactures, with the chapters of the Wealth of Nations, where the same topics are treated, will perceive that Mr Hamilton has often done little else than repeat in his own language what had been not ill said already by Dr Smith; to which indirect mode of quotation he seems to allude, when, towards the close of the preliminary part of that report, he introduces a quotation from 'the Wealth of Nations,' thus: 'the following remarks are sufficiently judicious and pertinent to deserve a literal quotation.'* Lastly, we may observe, that Mr Gallatin, in the tract to which we have already alluded, repeatedly quotes, and in a respectful manner, this immortal work, which it is the practice of one class of writers in the United States, at the present day, to treat with affected derision. We have made this short digression, in the hope that the names of Gallatin, of Hamilton, and of the framers of the Federal Constitusion, will have some weight with that large class of our citizens, who may want leisure to read many books themselves, and whose prejudices are excited against the soundest deductions of political economy, by the assertion that Adam Smith and his followers are a school of dreamers. We now proceed to Mr Louis Say's remarks on the doctrine of the *division of labor*, as taught by Adam Smith. Those, who may think that he detects an error on this subject, in the 'Wealth of Nations,' may spare their triumph over its author, when they reflect that this error at least is common to all schools of political economy, and by the phrase 'division of labor,' is, as it were, incorporated into our language.

This phrase, according to our author, is confused and scarcely significant, and when the subject is analyzed, it will be found that what is ascribed by Adam Smith to the division of labor, is chiefly owing to the use of machinery. One man may in this way do the work, which twelve would have been necessary to perform without the requisite machines; and twelve men, deprived of the machines and tools which the pin-makers, for instance, use, would be far from fabricating as many

* Report of the Secretary of the Treasury on the subject of Manufactures, made Dec. 5, 1791. Reprinted by order of the House of Representatives, Dec. 7, 1809. See page 77.

in the same space of time as one man, with the proper instruments and the skill to use them.

'This, pursues our author, is simple and evident; but Adam Smith seems to have rendered the subject complicated and obscure, in attributing the increase of wealth to what he calls the division of labor. In the first place, this expression is indistinct in itself, and Adam Smith before dwelling so long on 'division of labor' should have explained what he understood by this phrase. Nevertheless from the example which he cites of the pins, in which every one of the ten operations, necessary in making a pin, is performed by one man exclusively, it may be inferred that, by division of labor, he understands the separation of the different sorts of labor necessary to complete the production of a work, and the assignment to different workmen severally of those different operations. To a division of labor thus explained, Adam Smith attributes the increase of wealth, but it seems to us that his example shows that it is to the use of machines and instruments that it is to be ascribed, and not to the division of labor. In this example he begins with naming twelve operations necessary to the production of a single pin; divided as follows, among ten or twelve laborers, namely: 1. One who draws the wire. 2. One who straightens it. 3. One who cuts it. 4. One who points it. 5. One who grinds it at the top, to receive the head. 6, 7, 8. A first, second, and third workman, in making the head.* 9. One who puts on the head. 10. One who whitens the pins. 11. One who pricks the paper. 12. One who sticks the pins. He continues, "I have seen a small manufactory of this kind where ten men only were employed, and when some of them consequently performed two or three distinct operations. But though they were very poor, and therefore but indifferently accommodated with the necessary machinery, they could, when they exerted themselves, make among them about twelve pounds of pins in a day There are in a pound upwards of four thousand pins of a middling size. Those ten persons, therefore, could make among them upwards of 48,000 pins in a day. Each person, therefore, making a tenth part of 48,000 pins, might be considered as making four thousand eight hundred pins, in a day. But if they had all wrought separately and independently, and without any of them having been educated to this peculiar business, they certainly could not each of them have made twenty,

* Mr Louis Say (or Garnier, the French translator of Adam Smith) makes the most of the latter here. His words in the original English are, 'to make the head requires two or three distinct operations.' Wealth of Nations, Book I. c. 1. In summing up the matter however, A. Smith observes, that 'the important business of making a pin is divided into about *eighteen* distinct operations.'

perhaps not one pin in a day; that is certainly not the two hundred and fortieth, perhaps not the four thousand eight hundredth part of what they are at present capable of performing, in consequence of a proper division and combination of their different operations." '

'In the first place we remark on this example, that it is asserted that the ten workmen made in a day twelve pound of pins; which at the rate of twelve hours of effectual labor, amounts to a pound of pins to each hour of labor. Now as this pound contains 4000 pins, and as there are but 3600 seconds in the hour, it follows of consequence, that neither of the workmen can devote the whole of a second to the longest operation on one pin; because in one hour, four thousand pins must have passed through his hands, in order that at the close of the day, no one of the 48,000 be deficient in respect to any one of the operations. This is, at first, rather hard to believe, but there is nothing to reply to the words *I have seen*, with which A. Smith introduces the example. We may suppose, however, that these ten workmen were not charged with pricking the paper or sticking the pins, for these two operations would probably have required two workmen, so that there would have remained but eight workmen for the manufacturing of the 48,000 pins; which at the rate of ten operations to a pin, would make 48,000 operations a day for each workman, or scarce three quarters of a second to each operation, the twelve hours containing 43,000 seconds.

Confining then the manufacture to the ten first operations, by which a pin is produced, we may suppose very reasonably that a master pin-maker shall have learned and practised for himself each of these operations, and that he has been successively drawer of the wire, straightener, cutter, pointer, &c.; and consequently that in a factory which yields twelve pounds of pins in a day, or one pound of 4,000 pins in an hour, such pin-maker might have performed four thousand times in an hour any given operation, or, what is the same thing, 4,800 times in an hour and twelve minutes. Suppose then that the pin-maker, after having labored an hour and twelve minutes on the first operation, passes to the second and labors upon that, also, for one hour and twelve minutes, at the end of two hours and twenty-four minutes, he will have performed 4,800 times the two first operations. In continuing in this way, when he has finished the tenth operation, he will have labored for ten times one hour and twelve minutes, that is, for twelve hours; and he will have performed in this time four thousand eight hundred times every one of the ten operations, which compose the manufacture of a pin, that is to say, he will have manufactured 4,800 pins in the day, instead of twenty or even one, as maintained by Adam Smith. Allow that this pin-maker lose twelve minutes, at every change of operation by a little less

dexterity for want of exclusive employment on one, and that he employ an hour and twelve minutes upon the operation which would have cost but an hour, to one devoted solely to it, and he will have made in the day 4,000 pins only, instead of 4,800; that is, only one sixth less, instead of four thousand eight hundred times less, which, according to Adam Smith, would have been the result of a want of the division of labor.' p. 34—38.

Though we think our author here attributes too little to the dexterity acquired by exclusively performing one operation, yet we agree with him, in the main, that Adam Smith has most unreasonably exaggerated the beneficial effects of a division of labor; and we have no doubt that on analyzing the mechanical trades, where the greatest gains are ascribed to this division, it would be found that the chief saving was in the use of tools. Still, however, the mistake of Smith is rather in too great a detail of his example, and above all in using the phrase of 'division of labor,' than in his principles. When he comes to explain *how* the division of labor is advantageous, he very correctly ascribes its advantages, *first*, to the superior dexterity acquired by being confined to one operation; *secondly*, to a saving of time, which would be lost in passing from one operation to another; and *thirdly*, and lastly, (and we will add *mainly*,) to the use of proper machinery.* The true doctrine of the division of labor, we apprehend, will be found contained in this proposition, namely, that, other things being equal, 'those manufactures will be most productive, where the business is conducted on so *large a scale*, that appropriate machinery and separate workmen will be assigned to every operation.' This proposition implies a great market, and a great capital, and in short all those things, well known to favor the rapid accumulation of wealth, and leaves little or nothing to result from the metaphysical notion of division of labor. The whole error of Smith, like most of his other errors, is merely a little of that looseness of language, which must necessarily creep into the first essays on a moral science.

We proceed now to make our readers acquainted with a work entitled '*Du systeme d' import fondé sur les principes de l' économie politique*;'—'a system of taxation founded on the

* These three modes, in which the advantageous operation of the division of labor is explained, are mentioned in Hamilton's report on manufactures, nearly in the words of Adam Smith.

principles of political economy,' by the Vicomte de Saint Chamans, master of requests to the council of state, and prefect of the department of the Haute-Garonne. Mr Louis Say treats this work, with great external magnanimity, but it is plain that he regards it with mingled pity and horror, and he reasons against it with that melancholy earnestness, with which a sensible man always urges self-evident truths on those, who he knows will not comprehend them.

'The works hitherto noticed, says he, are all of the school of Adam Smith, and their errors arise from the faults of his nomenclature. The work we are now to examine belongs not to this school; it may be regarded as representing the vulgar opinions on political economy. It is for that reason that I proceed to refute not so much the errors contained in it, as those of people ill instructed in what concerns the interest of nations; and what is singular enough is that the greater part of governments are of this number.'

For ourselves we shall not take the thing so much to heart, but quote a few of M. de Saint Chamans' maxims, and leave them to the judgment of our readers.

His fundamental maxim is, 'all consumption is productive;' from which postulate he deduces three consequences:

'1. That saving, instead of enriching, empoverishes the state; he who spends all his income, enriches society; he who spends his capital ruins himself, but does not impoverish society,—on the contrary he enriches it.

'2. Luxury is the greatest source of wealth for countries, where there is industry enough to supply all kinds of demand.

'3. That the expenses of the government do not impoverish the country any more than private expenses, and that taxes, well laid, instead of impoverishing enrich a country.'

Having quoted these principles and the illustrations which M. de Saint Chamans subjoins, Mr Louis Say states the reasons, why the worthy viscount cannot, as would at first be suspected, be thought ironical. The only reason why he ought to be supposed sincere in his paradoxes has escaped Mr Say; it is, that the prefect of the Haute Garonne is ignorant of the subject of political economy.—Happy for the world if the Haute Garonne were singular in its prefect.

The second chapter of his work is entitled *on gold and silver coin and on the balance of trade*, a chapter which, if we

mistake not, will procure the viscount the honor of being translated in this country, and of passing through three or four editions in as many weeks. There is a wrathful naïveté in Mr Say's manner of introducing his notice of this chapter, which has a good deal pleased us.

'The ideas of M. de Saint Chamans, on money, and on the balance of trade, are those which are the most generally adopted by persons who have reflected but little on the matter, and who regard first appearances as decisive; like children who because they see the sun every day traverse the heavens from east to west, believe they know the nature of this luminary, not being able to distinguish the appearance from the reality, and who, in proportion to their own ignorance, laugh at those who tell them the sun is at rest in the centre of the system.'

The following is M. de Saint Chamans' system of the balance of trade.

'That a country is growing rich by drawing specie to itself from foreign countries; that it grows poor when specie passes from it to other countries; to take, in consequence, all modes of discovering which country sends the most merchandise to the other, and draws the most specie from it; to adopt every step either by prohibition of foreign merchandise, or by forbidding the exportation of gold and silver, to make one's country sell more than it buys, and by consequence, receive a tribute in money, which is called having the balance of trade in its favor, in a word, to have this balance in our own favor, and to prevent its being against us, *voila*, says M. de Saint Chamans, the system long adopted by the governments of Europe.'

Thus far the doctrines of the author, with whom Mr Say has made us acquainted, are certainly not peculiar to him, though not often embodied in treatises of political economy. In the principles, which we now proceed to quote, though our readers may not espouse his opinions, they will probably do full justice to his consistency.

His third chapter is entitled, on *Prohibitions and Machines*, and thus he handles them.

'A premium of a million of francs, says he, has been offered for the invention of a machine for spinning flax and hemp. What would become of the persons of the two sexes now employed in spinning by hand? It would be wiser to pay a million to bury the secret, if it should be discovered. It were to be wished that governments would cease to rush blindly towards such improvements, and weigh the danger which arises from machines.'

Fortunate for Sir Richard Arkwright, that he was not a native of the Haute Garonne; fortunate for Mr Whitney, that he did not devise the saw-gin in the prefecture of M. de Saint Chamans, unless he should think that in the viscount's proposal to pay a million francs to keep the machine secret, he should have fared better than he has done by making the saw-gin known.

The tenth section of this classical treatise, is on the advantages of taxation, which the viscount esteems one of the great blessings of civilized society. The illustration which he offers in support of it, shows the *practical* economist.

'A robber takes from me a purse of a thousand francs, and buys with them a fine horse, which I proposed to buy. I perceive indeed, that I have sustained a change and a loss, but I see that society has suffered neither, and is quite indifferent whether I or the robber be the rider or the walker.'

This author adds with astounding frankness, '*the government who taxes, is a legal robber,*' a proposition which Mr Say professes his willingness to take on the credit of the viscount, 'who being an agent of the government is competent to speak to the point.'

But it is time to leave this noble author, whose work we believe is the only one bearing the name of a treatise on political economy, in which such doctrines as we have quoted from it are held forth. These doctrines, it is true, have a great and extensive agency in the world; not as Mr Louis Say thinks, because the governments at the present day share the opinions of Mr Saint Chamans, but because they dare not adventure on great changes. M. de Saint Chamans declaims against machines; did the invention of machinery depend on governments, the terrors of a Luddite mob, might often influence the weak nerves of a minister to prohibit the most brilliant improvements. Adam Smith observes, in the so often quoted and admirable illustration, that at about thirty times the expense of French wine, very good wine could be raised in Scotland. Suppose that the ministers of a former day had followed up their theory resolutely, had prohibited all foreign wines, had offered bounties for the juice of the domestic grape, and at length brought the thing so far that the Lothians were covered with green-houses and intersected with flues; that many millions of pounds sterling were invested in the estab-

lishment, and that six hundred thousand laborers received from it their support. Would any minister dare to repeal the laws, by which this preposterous burden was laid on the nation? Let the history of Spitalfields—the miniature of this supposed monstrous case—furnish the answer. It requires only that an abuse should be established, that a strong local interest be pledged to its support, that capital be invested in sufficient quantity, and laborers depend in sufficient numbers on the continuance of the nuisance, and ministers will love their popularity too well to abate it. The interested few, are ever more zealous than the oppressed many. Various such partial interests combine to support each other. The dealer in Port wine, lends a vote to the silk mercer, against the importation of French silks, and has his reward in another vote against the importation of claret. There is no doubt but that in this way, by a system of compromises, well adapted and long pursued, industry, even when disjointed on the rack of legislative interference, may yet fix itself in a firm, though in an unnatural posture, as a man may get to walk about upon a limb which has been dislocated and has grown callous out of the socket. But his motions are stiff and inconvenient; and what is worse, the evil cannot be remedied, or only by cruel sufferings. Thus the great remedy of the gathering abuses in states, is too often derived only from the last solemn act of an over taxed, an over governed, an over wrought people: from the stern and elementary legislation, which passes not beneath pillared domes, nor on the luxurious sofas of a senate-house, among the benignant mockeries of black rods and white rods, and the tinkling of speakers' bells, and the putting down and taking up of maces; but in the stormy tribunals of the multitude, long suffering, late awakening, and slowly satiated. Prohibitions, bounties, monopolies, succeed upon each other by reasons of state, compromise of rival interests, delusion, or timidity of rulers, till the whole action of society is disordered, and when the evil is too great to be longer borne, the populace rising in its strength and in its wrath, as blind as it is infuriated, conscious only of its sufferings and ignorant of the remedies sweeps all off at one blow, and substitutes Jack Cade's tariff in its stead: 'Then shall seven halfpenny loaves be sold for a penny: the three hooped pot shall have ten hoops, and I will make it felony to drink small beer.' By the blessed device

of a representative government, our beloved country has hitherto been spared from a near approach to these evils. In the expressive language of Mr Gallatin, at the close of his report on Manufactures, April 17, 1810, 'no cause has more promoted, in every respect, the general prosperity of the United States, than the absence of those systems of internal restrictions and monopoly, which continue to disfigure the state of society in other countries.' The various, and, if we must call them so, the conflicting interests, find their respective advocates on the floor of congress, and there will ever be much reason to acquiesce in what is there done, as being done on a large view of the general welfare. In the great question, which has for some years past been there agitated, of additional encouragement to the manufacturing interest, those concerned in it certainly cannot complain that their cause has not been pressed with ability and zeal, and will find we think, on a calm review of what has been done for them, that those, who have opposed the full extent of their demands, have, nevertheless, in the language of our revered chief magistrate, to the sixteenth Congress, been willing to extend to manufactures, all the encouragement, which is consistent with a 'due regard to the other great interests of the nation.'

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